JUDICIARY COMMITTEE

MEETING PACKET

Wednesday, November 9, 2005
9:45 a.m. – 11:45 a.m.
Morris Hall
(17 HOB)

Allan G. Bense
Speaker

David Simmons
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Speaker Allan G. Bense

Judiciary Committee

Start Date and Time:	Wednesday, November 09, 2005 09:45 am
End Date and Time:	Wednesday, November 09, 2005 11:45 am
Location:	Morris Hall (17 HOB)
Duration:	2.00 hrs

Workshop on the appropriate scope of the Florida Constitution

NOTICE FINALIZED on 10/28/2005 11:23 by Williams.Tanesha

Florida House of Representatives

Judiciary Committee

Allan G. Bense
Speaker

David Simmons
Chair

COMMITTEE ON JUDICIARY

Morris Hall (17 HOB)
November 9, 2005
9:45 a.m. – 11:45 a.m.

Agenda

1. **Call to order**

2. **Roll call**

3. **Welcome and opening remarks**

   Representative David Simmons, Chair

4. **Workshop on the appropriate scope of the Florida Constitution**

   Staff presentations and discussion among Representatives

8. **Closing remarks**

   Representative David Simmons, Chair

9. **Adjourn**

HISTORY OF PROPOSED CONSTITUTIONAL AMENDMENTS SINCE 1968

Source	Proposed	Adopted	Rejected	Removed
Legislature	89	71	16	2
Citizen Petition	26	21	5	0[1]
Taxation and Budget Reform Commission	4	2	1	1
Constitutional Revision Commission	17	8	9	0
TOTAL	136	102	31[2]	3

[1] The Court has held numerous citizen initiatives invalid, thereby preventing them from ever being successfully proposed or appearing on the ballot.

[2] Twenty of which were rejected during the period of 1970 though 1978.

STRUCTURE OR POLICY
Nature of amendments proposed by citizen initiative

INITIATIVE PROPOSED AMENDMENTS ADOPTED:

Election Date	Votes For	Votes Against	Title	Sponsor	Structure/ Policy*
11/041976	1,765,626 **79.3%**	461,940	Sunshine Amendment	Initiative Committee Before 1988	Structure
11/04/1986	2,039,437 **63.6%**	1,168,858	State Operated Lotteries	Initiative Committee Before 1988	Structure
11/08/1988	3,457,039 **83.9%**	664,861	English is the Official Language of Florida	Florida English Campaign	Policy
11/03/1992	2,493,742 **53.6%**	2,154,747	Homestead Valuation Limitation	Save Our Homes Inc. PAC	Policy
11/03/1992	3,625,500 **76.8%**	1,097,127	Limited Political Terms in Certain Elective Offices	Citizens for Limited Political Terms PAC	Structure
11/08/1994	2,876,091 **71.7%**	1,135,110	Limiting Marine Net Fishing	Save Our Sealife Committee	Policy
11/08/1994	2,167,305 **58.1%**	1,560,635	Amendments Limiting Government Revenue May Cover Multiple Subjects	Tax Cap Committee	Structure
11/05/1996	2,825,819 **57.3%**	2,108,286	Everglades Trust Fund	Save Our Everglades Committee	Policy
11/05/1996	3,397,286 **68.1%**	1,594,175	Responsibility for Paying Costs of Water Pollution Abatement in the Everglades	Save Our Everglades Committee	Policy
11/07/2000	2,900,253 **52.7%**	2,607,495	Florida Transportation Initiative – High Speed Rail	Floridians for 21st Century Travel Connections & Choices	Policy

11/05/2002	2,550,201 **52.4%**	2,317,671	Florida's Amendment to Reduce Class Size	Coalition to Reduce Class Size	Policy
11/05/2002	2,813,145 **60.5%**	1,834,816	Local Trustees and Statewide Governing Board to Manage Florida's University System	Education Excellence for Florida	Structure
11/05/2002	2,608,996 **54.8%**	2,155,911	Animal Cruelty Amendment: Limiting Cruel and Inhumane Confinement of Pigs During Pregnancy	Floridians for Humane Farms	Policy
11/05/2002	2,868,500 **59.2%**	1,974,408	Voluntary Universal Pre-Kindergarten Education	Pre-K Committee (Parents for Readiness Edu. for our Kids)	Policy
11/05/2002	3,501,161 **71.0%**	1,431,966	Protect People from the Health Hazards of Second-Hand Tobacco Smoke by Prohibiting Workplace Smoking	Smoke-Free for Health, Inc.	Policy
11/02/2004	4,583,164 **63.6%**	2,622,143	Medical Liability Claimant's Compensation	Citizens For a Fair Share, Inc.	Policy
11/02/2004	3,631,261 **50.8%**	3,512,181	Dade & Broward; Slot Machines	Floridians For a Level Playing Field	Policy
11/02/2004	5,198,514 **71.3%**	2,097,151	Minimum Wage	Floridians For All PAC	Policy
11/02/2004	4,519,423 **63.7%**	2,573,280	Repeal of High Speed Rail	Derail the Bullet Train	Policy
11/02/2004	5,849,125 **81.2%**	1,358,183	Patient's Right to Know About Adverse Incidents	Floridians For Patient Protection	Policy
11/02/2004	5,121,841 **71.1%**	2,083,864	Public Protection From Repeated Malpractice	Floridians For Patient Protection	Policy

INITIATIVE PROPOSED AMENDMENTS DEFEATED:

Election Date	Votes For	Votes Against	Title	Sponsor	Structure/Policy*
11/05/1996	2,328,016 **45.6%**	2,774,806	Fee on Everglades Sugar Production	Save Our Everglades Committee	Policy
11/08/1994	1,566,451 **38.0%**	2,555,492	Limited Casinos	Proposition For Limited Casinos, Inc.	Policy
11/08/1988	1,837,041 **43.4%**	2,394,932	Limitation of Non-Economic Damages in Civil Actions	Florida Committee for Liability Reform	Policy
11/04/1986	1,036,250 **31.7%**	2,237,555	Casino Gambling Authorized Subject To County Option	Initiative Committee Before 1988	Policy
11/07/1978	687,460 **28.6%**	1,720,275	Casino Gambling	Initiative Committee Before 1988	Policy

* "Policy" means a mandate or self-executing provision that directs state action or spending or regulates (or requires the Legislature to regulate) private behavior. The purposes of each of these provisions could have been accomplished by direct action of the Legislature without a constitutional amendment, or with an amendment that merely authorized, rather than directed implementation of the policy. The initiative process was used to by-pass or overrule the Legislature to accomplish normal legislative purposes.

* "Structure" means a limitation or restriction of government, an authorization of governmental power with no mandate to use the power, an organization or assignment of governmental power, or a protection of private rights that works as a limitation of governmental authority. These either could not have been enacted by the Legislature, or the intent was to permanently prevent all future legislatures from regulating in a particular area. In some cases, the initiative is classified as policy even though it is not mandatory, because it contains significant substantive specificity in authorizing some legislative action. In at least one case classified as "Structure," however, an overall complex limitation on total spending seems to predominate over one specific directive included (especially because, after a number of years' experience, the specific directive has never been applicable).

Florida Department of State
Division of Elections
Initiatives / Amendments / Revisions

Currently Verified Totals are unofficial until the Initiative receives certification.

Year:	Status:	Title:	Sponsor:
2006	Active		Yari-Professor Fun-Der-Full's Legal

Elec Year	Status	Date	Title	Serial Number	Sponsor
2006	Active	07/19/2004	"No Vote"	04-09	Israel
2006	Active	03/09/2004	ABOLITION OF ALIMONY OBLIGATIONS	04-04	Citizens for Liberty and Privacy
2006	Active	03/22/2005	ADDITIONAL STANDARDS TO BE FOLLOWED IN APPORTIONING LEGISLATIVE AND CONGRESSIONAL DISTRICTS	05-15	Committee for Fair Elections
2006	Active	11/04/1996	Children's Right Not To Be Abused	96-08	Protect Our Children
2006	Active	06/16/1997	Children's Right Not To Be Molested	97-03	Protect Our Children
2006	Active	03/04/2003	Comprehensive Health Care Services For All Persons	03-03	Floridians For Health Rights
2006	Active	10/17/2005	Comprehensive Health Care Services For All Persons	05-23	Floridians For Health Rights
2006	Active	08/14/2002	Conservation and Protection of Florida's Scenic Beauty. Florida's Billboard Amendment	02-11	Conserve and Protect Florida's Scenic Beauty www.scenicbeaut
2006	Active	04/22/2003	Disposition of Certain Judicial Actions	03-15	Peoples' Constitutional Amendment Committee
2006	Active	03/19/2003	Equal Employment Opportunity Initiative	03-05	Florida Committee To Preserve Civil Rights
2006	Active	01/20/2005	Extending existing sales tax to non-taxed services where exclusion fails to serve public purpose	05-04	Floridians Against Inequities in Rates (Fair)
2006	Active	04/22/2003	False Representations in Documents Related to Persons and Property	03-17	Peoples' Constitutional Amendment Committee
2006	Active	02/09/2005	Florida Marriage Protection Amendment	05-10	Florida4Marriage.org

2006	Active	09/22/2005	FUNDING OF EMBRYONIC STEM CELL RESEARCH	05-22	Floridians for Stem Cell Research and Cures, Inc.
2006	Active	04/27/2004	Give legal guardians the right to vote on behalf of disabled adult dependents	04-06	Give Them A Voice Initiative
2006	Active	04/27/2004	Give parents the right to vote for their child	04-05	Give Them A Voice Initiative
2006	Active	03/22/2005	IMPLEMENTATION OF APPORTIONMENT AND DISTRICTING COMMISSION 2007	05-16	Committee for Fair Elections
2006	Active	03/21/2005	INDEPENDENT NONPARTISAN COMMISSION TO APPORTION LEGISLATIVE AND CONGRESSIONAL DISTRICTS WHICH REPLACES APPORTIONMENT BY LEGISLATURE	05-14	Committee for Fair Elections
2006	Active	02/08/2005	Initiative directing manner by which sales tax exemptions are granted by the legislature	05-09	Floridians Against Inequities in Rates (Fair)
2006	Active	01/21/2005	Initiative requiring legislative determination that sales tax exemptions serve a public purpose	05-02	Floridians Against Inequities in Rates (Fair)
2006	Active	06/28/2004	Instant Runoff Voting	04-08	Coalition for Instant Runoff Voting
2006	Active	04/22/2003	Judicial Elections and Duties	03-16	Peoples' Constitutional Amendment Committee
2006	Active	05/11/2000	Labeling of Foods that are Genetically Engineered	00-04	Floridians For Health Rights
2006	Active	01/20/2005	LEAVE NO LEGISLATOR BEHIND	05-01	VOTE AT 16
2006	Active	01/22/2003	Lower Voting Age To Sixteen	03-02	VOTE AT 16
2006	Active	10/20/2004	Mandatory Debate Amendment	04-11	Floridians for Action
2006	Active	01/28/2003	Parent's Right to Request and Receive A State Funded School Choice Scholarship	03-01	Florida Education Reform Committee
2006	Active	10/17/2003	Partial Repeal of Florida's Amendment to Reduce Class Size	03-39	Committee for Better Public Education
2006	Active	10/31/2003	Physician Shall Charge the Same Fee for the Same Health Care Service to Every Patient	03-40	Floridians for Patient Protection
2006	Active	09/22/2005	Prohibiting state spending for experimentation that involves the	05-21	Citizens for Science and Ethics, Inc.

			destruction of a live human embryo.		
2006	Active	07/20/2005	PROTECT PEOPLE, ESPECIALLY YOUTH, FROM ADDICTION, DISEASE, AND OTHER HEALTH HAZARDS OF USING TOBACCO.	05-19	Floridians For Youth Tobacco Education, Inc.
2006	Active	04/01/2003	Protecting Rights of Abused or Neglected Nursing Home Residents	03-11	Floridians for Patient Protection
2006	Active	06/21/2005	REFERENDA REQUIRED FOR ADOPTION AND AMENDMENT OF LOCAL GOVERNMENT COMPREHENSIVE LAND USE PLANS.	05-18	Florida Hometown Democracy, Inc., PAC
2006	Active	03/04/2003	Replacing District School Boards with Parental Governing Councils With State Administrative Oversight	03-04	Save Our Schools
2006	Active	09/10/2002	Replacing School Boards with Parental Governing Councils With State Administrative Oversight	02-12	Save Our Schools
2006	Active	09/19/2003	Restoration of Voting Rights	03-36	Committee to Restore Voter Dignity, Inc.
2006	Active	09/13/2004	RETAIL EMERGENCY POWER INITIATIVE	04-10	Floridians for Action
2006	Active	10/24/2005	Right of Children not to be Abused by Molesters	05-25	Protect Our Children
2006	Active	01/16/1998	Right of Intimate Privacy	98-01	Personal Sexual Privacy Initiative
2006	Active	04/22/2003	Right to Affordable Health Insurance	03-13	Peoples' Constitutional Amendment Committee
2006	Active	10/17/2005	Right to have Intimate Privacy	05-24	Personal Sexual Privacy Initiative
2006	Active	01/16/1998	Save Our Florida	98-02	Save Our Florida
2006	Active	05/07/2004	Senior Citizen Homestead Property Assessment Cap	04-07	The Committee to Cap Seniors Homestead Assessments
2006	Active	09/21/1995	Single Payer Health Care		Floridians For Health Security
2006	Active	04/22/2003	Tax Foreclosure on Homsteads of Elderly Prohibited	03-14	Peoples' Constitutional Amendment Committee

2006	Active	03/20/2001	The Right of Children Not to be Molested	01-01	Protect Our Children
2006	Active	05/22/2002	The(Judicial Accountability Initiative Law) J.A.I.L.4judges amendment to the Florida Constitution	02-06	J.A.I.L. 4 Judges
2006	Active	08/18/2003	Truth and Justice in the Courts	03-32	Peoples' Constitutional Amendment Committee
2006	Active	05/06/1992	Voter Control of City Taxes		Home Rule Committee
2006	Active	06/10/2002	Yari-Professor Fun-Der-Full Lawrence's - Legalization of Marijuana Committee	02-08	Yari-Professor Fun-Der-Full's Legalization of Marijuana Cmte

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Nova Law Review
Fall 1997

*391 FIRST PRINCIPLES FOR CONSTITUTION REVISION

Daniel Webster [FNa1]
Donald L. Bell [FNaa1]

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I. Introduction

Alexis de Tocqueville, the great social observer and political scientist, arrived in the United States in 1831, [FN1] only three years after Andrew Jackson, the populist, former military Governor of Florida, was elected President of ***392** the United States. [FN2] Tocqueville found a nation of people "seeking with almost equal eagerness material wealth and moral satisfaction; heaven in the world beyond, and well-being and liberty in this one." [FN3] This was the nature of the people who only a few years later adopted Florida's first constitution. [FN4] Floridians today still seek those things our predecessors pursued with such vigor: freedom of conscience, financial security, and liberty.

In an effort to assure the continued protection of these values, the framers of the 1838 Florida Constitution included a strong entreaty to those who read it a century and a half later. They noted that "frequent recurrence to fundamental principles, is absolutely necessary, to preserve the blessings of liberty." [FN5] Like the framers of other state constitutions, the framers of Florida's original constitution understood that over time all human institutions, including constitutions, are subject to potentially harmful changes, misunderstandings, and misinterpretations. They believed that it was necessary to periodically revisit the reasons for creating a constitution in order to assure its continued vitality. [FN6] As Florida pursues the task of ***393** considering revisions to its constitution, this article is intended to discuss the fundamental principles that led to the creation of the Florida Constitution. It also discusses some of the major features of the Florida Constitution and suggests that its provisions should be examined from a functional perspective to determine whether they adequately serve appropriate constitutional purposes.

II. Lessons from Previous Revision Commissions

The only previous Constitution Revision Commission that has met pursuant to article XI of the Florida Constitution convened in 1978. [FN7] While the 1978 Commission did not produce amendments acceptable to the public, its review of the constitution was still of some value. [FN8] The 1978 Commission raised public consciousness with regard to the role of our constitution and its contents. [FN9] By proposing certain amendments, it also brought particular issues to the forefront of the state's public policy agenda ***394** where they would remain for many years to come. [FN10] If the current revision process produces similar results, it will have served a useful purpose.

The 1965 Constitution Revision Commission, which created our current constitution, the Constitution of 1968, was formed through a different process than either the 1978 Commission or the current 1997-98 Commission. [FN11] The 1965 Commission also differed from the 1978 Commission in that it did not pursue changes in public policy as a primary objective. Perhaps for that reason, the 1965 Commission was the more successful of the two. [FN12]

Those involved in the revision process of the mid-1960s had a general understanding that "the rightful place of the states in the federal system had been overwhelmed by central federal power." [FN13] The Commission that produced the Florida Constitution of 1968 sought to address that concern. It also focused on eliminating extraneous provisions thereby returning the constitution to its fundamental purposes. [FN14] The Commission succeeded in substantially reducing the size of the Florida Constitution [FN15] and in eliminating "much of the obsolete and redundant language." [FN16]

***395** Perhaps the current Constitution Revision Commission would be wise to pursue these same objectives on a more modest scale. The Florida Constitution continues to serve as a vehicle for some "largely meaningless but politically popular verbiage." [FN17] Accordingly, there are still opportunities for positive improvements to the constitution by pursuing the reductionist course that began with the creation of the 1968 Constitution. [FN18]

Because the Florida Constitution has a strong foundation and generally serves the people well, wholesale revision is probably not advisable. [FN19] Nonetheless, the revision process offers us, as a society, an opportunity to review the reasons why we have a constitution and to consider whether specific provisions of our constitution are serving their intended purposes. That review may, after all, reveal ways in which the constitution can be improved. To the extent that revision is necessary at all, the objective in revising or amending the constitution should be to adjust the constitution's contents back to its basic purposes, thereby restoring its power to inspire the people and the government.

***396** III. Influences, Origins, and Principles Underlying Florida's Constitution

No revision of the Florida Constitution should be undertaken without first attempting to understand its nature and the purposes it serves. That understanding must come primarily from an examination of the history of constitutional government. [FN20] Reviewing history will also provide some perspective with regard to the things that a constitution can and cannot accomplish. [FN21]

In reviewing our history, it is not difficult to see the effects of constitutional law. As Tocquevile said: "America is the only country in which it has been possible to witness the natural and tranquil growth of society, and where the influence exercised on the future condition of states by their origin is clearly distinguishable." [FN22] Having achieved a reasonable level of success at self-government, Floridians should not ignore the principles that contributed to that success.

A. Early Constitional Theory and Practice

The seeds of modern constitutions can be found in documents as old as the Magna Carta. [FN23] However, it was in the latter part of the eighteenth ***397** century that Europeans began to fully articulate the key elements of constitutional theory, such that they could be harmonized into a body of law. [FN24] A common understanding developed that when individuals came together to form governments, they had certain inherent rights that must survive the creation of government. [FN25] These rights could be apprehended through an understanding of morality, [FN26] reason, and logic, and they could not be divested. [FN27] Indeed, governmental infringements of fundamental individual liberties were seen as the potential source for a multitude of threatening conditions. [FN28] Government had come to be seen as a consensual creation of those who sought to be governed. [FN29] It was considered that ***398** people, as the creators of government, held all political power. [FN30] They could bestow power on political figures, or withhold power and reserve it for individuals in society as the people deemed appropriate. [FN31]

Notwithstanding the significance of revolutionary thinking, the translation of constitutional theory into practice did not result from the peaceful contemplation of scholars. Government is believed to have arisen from the desire to fully exploit freedom [FN32] and the necessity of securing self-protection against others. [FN33] "Constitutional government," however, arose much more recently to provide people with protection against other forms of government. As we approach the revision process, we must remember that constitutions resulted from governmental oppression. [FN34] Oppressive government turned the public mind away from obedience to the laws of kings and toward the laws of reason. [FN35] Our first responsibility is to assure that our constitution continues to protect against tyranny.

B. Constitutional Developments in the States

For practical reasons, constitutional theory could not immediately be put into full practice in Europe. Perhaps because there was a less existing government to supplant, and the tyrannical monarchies were more remote, [FN36] ***399** the principles of free self-governance found more fertile soil on this continent.

As Tocqueville noted:

> The general principles which are the groundwork of modern constitutions, principles which, in the seventeenth century, were imperfectly known in Europe, and not completely triumphant even in Great Britain, were all recognized and established by the laws of New England: the intervention of the people in public affairs, the free voting of taxes, the responsibility of the agents of power, personal liberty, and trial by jury were all positively established without discussion. [FN37]

Because of continued oppression, the founders of our national government ultimately declared and sustained independence for the thirteen individual colonies that then existed. [FN38] However, it was eleven years later, in 1787, before the states joined together under the common bond of a single national constitution. [FN39] Before the Federal Constitution was

adopted, all of ***400** the thirteen states had adopted state constitutions. [FN40] Tocqueville noted that "[t]he form of the Federal government of the United States was the last to be adopted; and it is in fact nothing more than a summary of those republican principles which were current in the whole community before it existed, and independently of its existence." [FN41]

The state constitutions were entirely unique in the history of government. [FN42] In addition to the fundamental proposition that all political power is derived from the people, the state constitutions recognized, and for the first time resolved, certain problems inherent in the very idea of government-problems that could threaten the continued existence of self-government if left uncontrolled.

First, the states recognized that consolidations of power are dangerous to the public interest. [FN43] Having escaped one king, the people of the thirteen ***401** colonies were not anxious to find themselves under the control of another. [FN44] The consolidation and centralization of power outside the hands of the people to be governed is the essence of tyranny and was the first problem the framers of state constitutions had to overcome. [FN45] They attacked this problem in three ways: 1) by distributing the key powers of government [FN46] among three different branches, each having some power to control the other two; 2) by further distributing the powers given to government among numerous offices, thereby limiting any one office's ability to exercise unrestrained power over the people; [FN47] and 3) by creating constitutions that passed only a ***402** portion of the peoples' inherent powers to the states, reserving certain powers to individuals in the form of rights. [FN48] Some, but not all, of these rights were enumerated in the state constitutions. [FN49] Ultimately, the addition of a national constitution was intended to add another layer of protection against the exercise of tyrannical power. [FN50]

The framers of the state constitutions also recognized that by placing the power to make governmental decisions in the hands of a majority of the people, the remaining "political minorities" might suffer injustices. [FN51] As a practical matter, it was also unwieldy to expect all individuals to share in every decision by voting. Thus, to protect against "the tyranny of the majority," [FN52] and to aid the practical administration of government, the states ***403** established systems of representational government. Instead of voting directly on issues, citizens voted to select individuals from amongst themselves who would then be given specific, limited powers, through the constitution, to act on behalf of the whole body of people they represent. [FN53]

Our Federal Constitution, like the state constitutions before it, [FN54] was based on the principles of what has come to be known as "republican democracy." [FN55] As previously noted, the people were very jealous of their independence, and they did not desire to come under the rule of a central government. [FN56] Nonetheless, they saw the necessity of joining the states together for certain limited purposes. [FN57] The theory underlying the nation-state relationship was that state officials derived their authority directly from the people via the state constitutions. [FN58] That authority included the ability to ***404** join together with other states to form a federation or confederation under the banner of a single constitution. [FN59]

However, the states could grant the federal government no greater power than they received from their own people, and most of that power could not be conveyed. [FN60] Thus, the power of the federal government was intended to be sharply limited to certain specific functions. [FN61] A large portion of the Federal Constitution is dedicated to defining and establishing boundaries between the federal and state authorities, thereby limiting the federal government's authority to act in contradiction of state power. [FN62]

C. The Development of Constitutional Law in Florida

Florida is a comparative newcomer to statehood, [FN63] and the drafters of our first state constitution in 1838 [FN64] undoubtedly relied heavily on the ***405** constitutions of the states that preceded Florida in becoming a part of the federal republic. [FN65] More importantly, these early drafters relied on the same principles on which those predecessor constitutions were based. [FN66] They also relied, to a significant extent, on contemporary writings of the times about the nature of constitutions and on the fundamental elements of republicanism and democracy. [FN67] In addition, they relied to some degree on the Federal Constitution. [FN68]

Over the years, the Florida Constitution has been revised numerous times. The first major revision occurred in 1861, when Florida seceded from the Union. [FN69] In 1865, the state created a new post-war constitution that was intended to help Florida gain readmission to the Union. However, owing to ***406** the enactment of the Federal Reconstruction Acts [FN70] and continued military occupation, the 1865 constitution was never fully effective. [FN71]

In 1867, the federal government compelled a state constitutional convention. [FN72] Because of its compulsory nature and other circumstances surrounding its enactment, the constitution produced by that convention-the 1868 constitution-was never treated by the people of Florida as a source of real authority. [FN73] After the end of Reconstruction, the 1868 constitution was ultimately abandoned, and the 1885 constitution was adopted to take its place. [FN74]

***407** Although frequently amended, [FN75] the 1885 constitution continued in force until it was replaced by the 1968 constitution. Florida's government continues to operate under the authority of the 1968 constitution. As previously noted, the 1968 constitution removed much extraneous political material from the 1885 constitution, with the intent to improve the constitution's ability to serve its basic purposes. [FN76]

As was the case with the constitution of 1838, [FN77] the 1968 constitution is a distinctly populist document that now includes five different methods of amendment, [FN78] and an explicit statement that all political power originates with the people. [FN79] It also contains an explicit separation of powers clause, [FN80] sharp limits on the creation of laws by the legislative branch, [FN81] some unique local government provisions, [FN82] and a strong system of checks and balances. [FN83] Finally, it contains the written embodiment of certain rights its authors ***408** considered inalienable. [FN84] As will be discussed, it also contains other significant provisions that limit governmental power over the people.

IV. Functional Analysis of the Florida Constitution

Over the years, scholars and courts have employed a wide range of methods for analyzing constitutions. Some principal methods include: deriving the meaning of the constitution from the pure and literal meaning of its text ("textualist"), [FN85] finding meaning in the intent of the framers ("originalist"), [FN86] and treating the constitution as a living document that must be interpreted to conform to the immediate needs of modern society ("interpretivist"). [FN87] However, for the purposes of this article the constitution ***409** is not being applied to a specific set of facts. Rather, under consideration is whether the constitution's provisions are serving the purposes for which they were intended. [FN88]

A constitution may properly be regarded as a document in which the people set forth the structure of the government, including any powers they wish to convey to the government from themselves, and including any instructions they wish to include about how those powers are to be distributed, retained, altered, or removed. [FN89] It may also include an enumeration of rights, but that is not strictly necessary because individual rights are considered inherent in the individuals for whom the government was created. [FN90] Given these factors, and the purpose of this article which is to ***410** consider first "principles," the authors rely primarily on what can be fairly described as a "functional analysis" of Florida's Constitution.

A. Protecting Against Tyranny: The Separation of Powers

"In framing a government which is to be administered by men over men, the great difficulty lies in this: You must first enable the government to control the governed; and in the next place oblige it to control itself." [FN91] Tyranny arises most easily when all power is concentrated in the hands of a single person or in the hands of just a few. A constitution that divides power in numerous ways and in numerous directions will best serve the constitutional function of protecting against tyranny. [FN92] Accordingly, the Florida Constitution, the United States Constitution, [FN93] and the constitutions of the remaining forty-nine states divide government into three branches: the legislative, the executive, and the judiciary.

Dividing government powers on paper, however, does no good, if the divisions are not respected in practice. The federal government and the states vary in the extent to which they allow one branch of government to engage in the essential functions of another. About his vision for the federal system, Madison commented:

> In the compound republic of America, the power surrendered by the people is first divided between two distinct governments, and then the portion allotted to each subdivided among distinct and separate departments. Hence a double security arises to the rights ***411** of the people. The different governments will control each other, at the same time that each will be controlled by itself. [FN94]

Thus, the framers of the Federal Constitution intended to create a system incorporating strong divisions of power. However, through judicial acquiescence and the constant pressure the branches of government exert on each other [FN95] those divisions have largely given way. [FN96]

The Florida Constitution, unlike its federal counterpart, contains an explicit separation of powers requirement. [FN97] The

purpose of this provision was to limit the extent to which any branch of government may perform functions assigned by the constitution to another branch. [FN98] Florida courts have indicated that Florida's separation of powers requirement is stronger than the federal requirement because it is explicit. [FN99]

Under Florida's doctrine against encroachment, no branch of government may encroach on the powers delegated to another branch by the ***412** constitution. [FN100] For example, the Legislature cannot reserve to itself the right to execute the laws it creates because the power to execute the laws is reserved to the executive branch. [FN101] Similarly, an officer of the executive branch cannot engage in lawmaking-a function that, because of its supreme nature, is reserved exclusively to the legislative branch [FN102] adjudicate the rights or claims of an individual, a function reserved to the judicial branch. [FN103]

A concordant policy, the doctrine of non-delegation, was intended to prevent the Legislature from delegating its lawmaking power to either of the other two branches of government. While it could, and should, be given stronger effect, the courts have at least found that the doctrine forbids the Legislature from delegating its core functions without any guidance or limits as to how those functions are to be exercised. [FN104] The doctrine against encroachment and the doctrine of non-delegation are valuable policies derived from hundreds of years of wisdom. [FN105] While these doctrines can provide the people with a high level of protection against tyranny, the division of powers is not as strong as it once was. We have not been careful in guarding against a merger of the functions of government in the hands of a single branch. [FN106] Accordingly, the Revision Commission should consider ***413** whether the separation of powers under the Florida Constitution, and its related doctrines, can be strengthened.

B. The Legislative Branch

John Locke saw the establishment of legislative power as the first and foremost of all positive laws. He called the law-making function the "supreme power of the commonwealth" [FN107] because it is the responsibility of the legislative branch to make laws that will govern all, including the executive and the judiciary. [FN108] Accordingly, he believed that some sharp controls on the legislative power were necessary. [FN109] The first of these controls is, of course, the people themselves, who protect against the rise of tyranny through their ability to remove legislators from office by the power of their votes. [FN110] A second control on the Legislature is the fact that the lawmaking power is never concentrated in the hands of a single person or of a small group of people. In Florida, the constitution divides the Legislature between two separate houses-the House of Representatives, with one-hundred and twenty members, and the Senate, with forty members. [FN111] Both houses must agree, by a majority vote of its respective members, before a law can be created, amended, or repealed. [FN112] Still a third control on the Legislature, suggested by Locke and applied successfully in Florida, is the ***414** part-time Legislature. [FN113] Locke correctly noted that there is not a constant need for new laws. [FN114] Accordingly, it is best that legislators meet on a part-time basis and then return home to live under the laws they have created. [FN115] Finally, the Legislature is controlled by the executive veto power. [FN116] Any law created by the Florida Legislature is subject to veto by the Governor. [FN117]

Florida's Constitution also has a significant set of rules that the Legislature must follow in creating laws, including restrictions on the kinds of laws it can make. [FN118] The Florida Constitution may be considered superior to some others, in part, because of these rules. For example, the "single subject rules" [FN119] found in the Florida Constitution have caused our state to develop a body of statutory law and an appropriations process that are far more clear and well-reasoned than those produced under the Federal Constitution. [FN120] The great significance of these seemingly modest provisions lies in the fact that they are the only constraints, outside the Federal Constitution, [FN121] on the Legislature's ability to make any laws it chooses. The people can only be secure in granting the Legislature such broad power to ***415** make laws, so long as there is a guiding foundation of moral law [FN122] contained in the constitution, to which all other law is subservient. [FN123]

One would also hope that in making legislative decisions, the Legislature would avoid creating laws that are sharply opposed to natural human interests or behaviors. Anticipating Lyndon Johnson's selection of the term "Great Society" to describe his unfortunate social agenda, Adam Smith once said:

[Man] seems to imagine that he can arrange the different members of the great society with as much ease as the hand arranges the pieces upon a chessboard; he does not consider that the pieces upon the chessboard have no other principle of motion than that which the hand impresses upon them; but that, in the great chessboard of human society, every single piece has a principle of motion of its own, altogether different from that which the Legislature may wish to impress upon it. If those

two principles coincide and act in the same direction, the game of human society will go on easily and harmoniously, and is very likely to be happy and successful. If they are opposite or different, the game will go ***416** on miserably, and the society must be at all times in the highest degree of disorder. [FN124]

Where the law allows them to do so, bureaucrats and other authorities will impose unreasonable expectations on an unwilling populace. [FN125] This is one of the principle reasons why our foundational legal document should be applied to limit the exercise of legislative power by executive branch officials. [FN126]

C. The Executive Branch

The executive branch is responsible for executing the laws the legislative branch creates. [FN127] While there is, as Locke suggested, an area of executive "prerogative" that arises from the Legislature's inability to foresee all circumstances in which immediate action might be required, [FN128] the executive risks being discredited whenever it acts without explicit legislative authorization. Consequently, it is constrained to act only in those ways unlikely to create public controversy. [FN129]

In establishing the executive branch of government, the Florida Constitution goes further than most other constitutions to protect the public from tyranny by assigning certain duties and responsibilities to particular officers and agencies of the government. [FN130] Unlike the constitutions of some ***417** other states, the Florida Constitution does not vest all executive power in the state's Governor. It establishes the Governor as the state's chief executive officer, [FN131] but then proceeds to divide the executive power among a wide range of other executive officers and agencies. [FN132]

Florida's Constitution is particularly unique in that it has an elected Cabinet consisting of six officers. [FN133] Not unexpectedly, it has been a source of vexation to many governors, including the current one, that the Office of Governor must share its power with members of the cabinet who may be political opponents. [FN134] However, establishing some competition at the ***418** highest levels of executive decision making sometimes causes an extraordinary level of inquiry and public debate to surround those decisions. [FN135]

In those areas of policy that require them to work with the cabinet, Florida's governors are undoubtedly more restrained and less capricious in making decisions. [FN136] This provides some worthwhile protection for the people. While some Cabinet reform may be appropriately considered by the Revision Commission, [FN137] the elimination of the elected Cabinet would not ***419** serve any useful purpose. It would limit public debate and increase the Governor's power at the expense of the people. [FN138]

The division of executive and legislative branch power does not stop with the cabinet. The Florida Constitution creates a multitude of constitutional agencies, offices, and commissions. These offices and agencies vary in the extent to which they are subject to the Governor's power [FN139] and some agencies even have a measure of independence from legislative oversight. [FN140] These additional distributions of power were ***420** intended to protect the people from tyranny. However, where any of these offices is not subject to an adequate system of checks and balances, they can become tyrannies within their area of authority. [FN141] It may also be true that some agencies and offices have outlived their usefulness. It would behoove the Revision Commission to examine each of these agencies and offices carefully to consider whether they are subject to adequate controls in the form of checks and balances, whether they have continuing vitality, and whether they serve a constitutional purpose. [FN142]

D. The Judicial Branch

Even when ruled by a king, "[b]etwixt subject and subject. . . there must be measures, laws, and judges. . . ." [FN143] The third branch of government, the judiciary, which has been called the least dangerous branch, [FN144] was developed in society to substitute for two powers that people had in nature. [FN145] The first is the power to do whatever one sees fit to assure self preservation. [FN146] The second is the power to punish those who attempt to ***421** infringe the right of self preservation. [FN147] Upon joining society, a person gives up both of these rights, but in exchange receives the support of the civil authorities to accomplish these matters on his behalf. [FN148]

In western society, these objectives are accomplished through the law of torts, the criminal law, and the laws of free economy that allow parties to apportion rights, duties, and privileges amongst themselves with the support of the government.

[FN149] If these remedies ceased to be available the people would resort to self-help, as if in nature. Furthermore, since as Locke noted, "[t]he great end of men's entering into society being the enjoyment of their properties in peace and safety. . . ." [FN150] there would be no reason for people to continue under the laws of a society if these interests were not protected. [FN151]

Article V of the Florida Constitution establishes a system of courts and judges consistent with the fundamental purpose of the judiciary by establishing that all judicial officers of the state shall be "conservators of the peace." [FN152] As Tocqueville explained:

The great end of justice is to substitute the notion of right or that of violence. . . . The moral force which courts of justice possess renders the use of physical force very rare and is frequently substituted for it; but if force proves to be indispensable, its power is doubled by its association with the idea of law. [FN153]

Thus, the principal function of the judiciary is public and private dispute resolution. [FN154] The courts have the power under article V to review the constitutionality of legislative acts. [FN155] But, like the other branches of government, the courts are confined to the exercise of those powers assigned to them under the constitution. The courts must take care that, in rendering their opinions, they do not go beyond the Legislature's intent, thereby ***422** creating new laws of their own. [FN156] Similarly, it is beyond the power of the courts to execute the laws. [FN157]

Florida's judicial officers have enormous independence. Appellate judges, including the Justices of the Supreme Court of Florida, do not stand for popular election as do the officers of the executive and legislative branches. [FN158] Instead, they are initially appointed and must stand for a merit retention election every six years thereafter. [FN159] If a majority of the electors casting ballots do not vote for retention, the Governor must appoint a replacement. [FN160] The practical effect of merit retention elections has been to give judges permanent tenure, subject only to the requirement that they retire at age seventy. [FN161] Because this is the case, some have expressed concern that Florida's judges are too far removed from the public will. [FN162]

Judges, like all other public officers, derive their power from the people. [FN163] If the judiciary is not subject to adequate checks and balances, judges, like other public officers, can exert tyrannical power over the people. [FN164] Unlike officers of the executive and legislative branches who are directly responsible to a majority of the voters, judges should be free from day-to-day political pressures. One of the principal functions of the courts is to protect political minorities from "the tyranny of the majority." [FN165] ***423** However, the judiciary should not be so far removed from public control that judges can afford to consistently ignore the public will. Because of the concerns that have arisen in this area, the Revision Commission should consider whether the judiciary is subject to adequate checks and balances. The Commission might also wish to consider whether it is appropriate to maintain a mandatory retirement age for judges. [FN166] If adequate external controls are lacking, then the Revision Commission should recommend changes to the voters. When considering revisions that would affect the judiciary, one point deserves consideration. It is clear that the Florida Constitution contains some provisions that lend themselves to expansive judicial interpretation. [FN167] Our judiciary would be more restrained if we had a ***424** more restrained constitution. Thus, the Revision Commission should consider making changes that move the constitution in a direction more conducive to judicial restraint.

E. Local Government

Just as there are some tasks of government that can best be accomplished at a national or state level, there are also tasks that can most beneficially be performed at the local level. [FN168] In considering revisions to the Florida Constitution, the Revision Commission should consider whether there are additional functions and responsibilities that can be delegated to local governments.

Only a few thousand people voted on the adoption of Florida's first constitution in 1838. The state's population was, of course, much less than today. State government was much closer to the people and it represented much less of an intrusion into citizens' daily lives. [FN169] Indeed, in many respects, the state government of 1838 was a local government. The change in the nature of the relationship between individuals and state government that has developed over the intervening years-simply through growth-represents an enormous loss of value to the people. Democracy works best in small units. A democracy composed of only six individuals is far more likely to satisfy its constituents' concerns than a democracy of six thousand. [FN170] Thus, it is appropriate that Florida has chosen to authorize the transfer of a significant portion of the people's political power to counties and municipalities through our state constitution. [FN171] However, as previously ***425** noted, the state has grown tremendously, and there has been a significant consolidation of power at the state level. Many people have lost faith in government simply because it seems so remote. Because of their relatively smaller size and the smaller number of people they must serve, the units of local government are better equipped to serve their constituents, in

most respects, than the state. [FN172]

In examining the provisions of our constitution, the constitution revision commission should generally avoid imposing any new limits on the authority of our local institutions and should consider ways in which those institutions can be strengthened. Where appropriate, the commission should consider transferring power from the state to local authorities where it is more easily controlled by the people themselves. This would help to restore both the perception and the reality of the people's control over the government they have created.

F. The Boundary Between State and National Government

Upon joining the Union, the State of Florida became a part of a federalist system of government established more than 200 years ago. [FN173] Our state constitution, together with its national counterpart, establishes a separate sphere of influence for our state's laws as opposed to the laws of the federal government. [FN174] Together, these two documents establish what is properly understood as the "Federal Government."

When Tocqueville visited the United States in 1831, he found "twenty-four small sovereign nations, whose agglomeration constitutes the body of the Union." [FN175] He described the relationship between the federal government ***426** and the states as "completely separate and almost independent." [FN176] The federal government being "circumscribed within certain limits and only exercising an exceptional authority over the general interests of the country." [FN177] Conversely, "fulfilling the ordinary duties and responding to the daily and indefinite calls of a community" fell to the states. [FN178]

The level of state independence Tocqueville saw in this country soon disappeared in the aftermath of the Civil War. The constitutional relationship between the branches of government was formally altered by the adoption of the post-Civil War amendments to the Federal Constitution. [FN179] However, the courts have subsequently agreed that in adopting those amendments, the states did not intend to completely eliminate their separate and independent nature. While the dividing lines between state and national government have been blurred, we still have a strong federalist system of government that continues to grow stronger. [FN180] That system forms an important part of the division of power that was intended to exist under the original state and national constitutions. The Federal Constitution was created not just to authorize the creation of a federal government, but for the benefit and protection of the states as independent legal entities. [FN181] It contains numerous provisions protecting the states from federal encroachment. [FN182] There are also several constitutional doctrines that have developed over the years to protect a separate sphere of influence for the ***427** states, including the "Erie doctrine," [FN183] the "adequate state grounds doctrine," [FN184] and the doctrine that allows the states to grant citizens greater rights under state law than exist under federal law. [FN185] There is, and should be, a constant tension over the proper boundary line between federal and state authority. As with economic competition in the private sector, this competitive aspect of our system of government is beneficial to the people and, wherever it appears to be endangered, the Revision Commission should consider whether steps can be taken to assure its preservation. [FN186]

V. The Nature of Rights

In addition to providing an organizational framework that protects the citizenry from governmental abuses, the Florida Constitution, like other constitutions, establishes the relationship between government and the people by enumerating certain rights. [FN187] These rights, as well as others, are ***428** said to be retained by the people, and are required to be kept free from state interference. [FN188]

The scope of this article does not allow for a complete exploration of every "right" that one might envision. As previously discussed, there are certain fundamental rights that are inherent in all people. [FN189] However, the term "right" has not been limited to its constitutional usage. It has often been used interchangeably with the word "entitlement" to describe both tangible and intangible goods and services to which individuals or groups believe they have some legal claim. [FN190] Accordingly, it is perhaps more useful when considering revisions to the constitution to engage in a discussion of the nature of rights and the significance of rights in our society.

John Locke asked the rhetorical question: "I[f man] in the state of nature be so free. . . [in] his own person and possessions. . . why will he. . . subject himself to the dominion and control of any other power?" [FN191] Not surprisingly, Locke also supplied the answer to his question and in that answer we can perceive the boundaries of rights:

[I]n the state of nature he has such a right, yet the enjoyment of it is very uncertain and constantly exposed to the invasion of others. . . the enjoyment of the property he has in this state is very unsafe, very insecure. This makes him willing to quit a

condition which, however free, is full of fears and continual dangers; and it is not without reason that he seeks out and is willing to join in society with others who are already united, or have a mind to unite for the mutual preservation of their lives, liberties, and estates, which I call by the general name "property.' [FN192]

As seen in Locke's statement, the concept of rights in society involves something of a trade-off. While the members of a society continue to possess all rights, they agree to accept limits on the exercise of certain rights, ***429** in exchange for the right to partake of and enhance certain others. As one commentator has noted:

[S]ociety must have rules, and. . . those rules inevitably encroach on personality. If the warden permits me to play solitaire in my prison cell I am at liberty to cheat all I want; nobody else is affected thereby. But if my freedom is somewhat enlarged, to permit me to play bridge with three fellow-prisoners, I must observe the rules of the game, arbitrary though they may seem to me. For the freedom of a social game I have surrendered the liberty I had at solitaire. [FN193]

Outside of society, people have absolute freedom to do as they please. Upon joining society they give up some portion of their freedom in exchange for the ability to exercise particular rights to a greater extent than would be possible outside society. [FN194] Tocqueville correctly noted that "[t]he Revolution of the United States was the result of a mature and reflecting preference for freedom, and not of a vague or ill-defined craving for independence." [FN195] It resulted from a "love of order and law." [FN196] If we seek to understand the nature of rights we must first understand that the concept of rights within society developed to facilitate the security of those who sought to be governed. [FN197] While rights are individual in nature and society's recognition of inherent rights will protect political minorities, a society will not tolerate the exploitation of these rights for the purpose of avoiding justice or engaging in extensive wealth transfers at the majority's expense. [FN198]

***430** It is also commonly understood that:

Since people, in a competitive or any other society, are by no means always just to each other, some regulation by the state. . . is unavoidable. . . . [[[But] the greatest injustice of all is done when the umpire forgets that he too is bound by the rules, and begins to make them as between contestants in behalf of his own prejudices. [FN199]

In addressing this concern, Locke described four restrictions on governmental power that, in his view, arose from the proposition that all governmental power was derived from the individuals who composed society. [FN200] The first restriction was that "[government] is not, nor can possibly be, absolutely arbitrary over the lives and fortunes of the people." [FN201] Elsewhere, he described this restriction to mean that governments "are to govern by promulgated established laws, not to be varied in particular cases, but to have one rule for rich and poor, for the favorite at court and the countryman at plough." [FN202] This restriction on government has been embodied in constitutional law under the broad heading of "equal protection of the laws." [FN203]

Next, Locke said that "these laws also ought to be designed for no other end ultimately but the good of the people." [FN204] Locke was referring to the necessity that laws be for the ultimate good of all people and not just for the benefit of a select few. This restriction on governmental power is related to the concept of equal protection of the laws and is also reflected in the so-called "public purpose doctrine." [FN205]

***431** Locke went on to explain that "the supreme power [the Legislature] cannot take from any man part of his property without his own consent." [FN206] This restriction is embodied in the Due Process Clause of the Florida Constitution. [FN207] Locke further explained that this includes efforts by a government to "raise taxes on the property of the people without the consent of the people. . ." [FN208]

Finally, Locke said "the Legislature neither must nor can transfer the power of making laws to anybody else, or place it anywhere but where the people have." [FN209] As discussed above, this restriction is embodied in the separation of powers requirement under the Florida Constitution. [FN210]

A. The Right to Equal Protection of the Laws

Because it is so significant to the exercise of all rights in society, the right to equal protection of the laws deserves some special attention. Every Floridian has an inherent right to equal protection of the laws of this state. [FN211] As noted above, this right arises from the fact that the individual relinquishes a certain amount of freedom in order to secure the rights society has to offer. [FN212] However, there is no right of equality of outcomes. Anatole France once mockingly said that "[t]he law,

in its majestic equality, forbids the rich as well as the poor to sleep under bridges, to beg in the streets, and to steal bread." [FN213] While this comment is both harsh and humorous, it is also true. The Florida Constitution does not attempt to cure all of the injustices ***432** and hardships of life, to do so would be beyond the power of any constitution. [FN214]

The right of equal protection of the laws forbids the government from treating those things that are similarly situated as though they are different, but it does not require the government to treat those things which are in fact different as though they are the same. [FN215]

As Locke said:

Though. . . all men by nature are equal,. . . [a]ge or virtue may give men a just precedence; excellence of parts and merit may place others above the common level; birth may subject some, and alliance or benefits others, to pay an observance to those whom nature, gratitude, or other respects may have made it due; and yet all this consists with the equality which all men are in, in respect of jurisdiction or dominion one over another, which was the equality I there spoke of as proper to the business in hand, being that equal right that every man has to his natural freedom, without being subjected to the will or authority of any other man. [FN216]

Recently, there has been a strong trend in our society to extend the constitutional [FN217] theory of equal protection of the laws to require equality of outcomes for particular groups or arbitrary classifications of people. [FN218] All ***433** rights of a constitutional nature are vested in individuals, not in groups. When we attempt to confer preferences upon groups as opposed to individuals, we move in direct violation of the principle of equal protection. [FN219]

A simple demonstration of this idea is that all citizens have an inherent right to petition the government for redress of grievances. This right arises based upon the individual's relationship with the government; [FN220] it does not arise by virtue of membership in any particular group. [FN221] Confining the right to redress grievances to members of particular groups, or granting some groups a more expansive right, would deprive all others of the equal benefit of that right. Thus, it is not only contrary to the notion of "individual" liberties to find that rights arise from groups, but doing so directly violates the principle of equal protection of the laws.

We may not all agree on which rights are constitutional in nature. But, we can all agree on a core of rights that belong in the constitution, and we must recognize that grossly expanding these rights into controversial areas can cause even core rights to be called into question. [FN222] This is not to suggest that Legislatures are forbidden from conferring benefits, [FN223] it simply means that government is not compelled to do so as a matter of constitutional law.

***434** B. Rights in Property

From the foregoing discussion, it can be seen that property should not normally be acquired by individuals from government. [FN224] Additionally, the rights properly considered constitutional are those that caused us to join into society, and without which we would not have willingly joined the society at all. These rights can be summarized as those necessary to enjoy life, liberty, and property within the bounds of a civilized society. [FN225] Locke considered all such rights under the notion of property, and described the circumstances under which primitive property rights evolved from common ownership. [FN226] He believed "acquisition and improvement" created a right of individual ownership. [FN227] One of the incidents of ownership is, of course, the power to convey an ownership interest to others, so property rights could be continued. [FN228] Natural limits to property rights existed in the form of limits on the amount of property a person could put to a useful purpose, without waste. [FN229]

The obvious limit to Locke's theory, the one he left unexplored, is the lack of sufficient property available for "acquisition and improvement." [FN230] This may cause market-based societies to appear unfair. However, free markets are constantly devising new forms of property, [FN231] new ways of executing transactions in property, [FN232] and new ways of taking ownership in property. [FN233] Thus, the problem Locke left unexplored, the potentially limited supply of property, seems to be constantly in the process of being overcome.

***435** VI. Other Provisions of the Florida Constitution

The Florida Constitution contains a body of non-fundamental legal material. Much of this material was incorporated at various times for political reasons. [FN234] While most of these provisions taken individually are quite harmless, the overall importance of the constitution is diminished in the minds of the public and lawmakers when legal material of lesser

significance is included in its pages. To the extent that these provisions are innocuous, there is no real reason to remove them from the constitution other than as a kind of housekeeping exercise. However, some provisions that are purely gratuitous have the potential to be misinterpreted and should be considered for removal. [FN235] For example, article IX, section 1, establishes the requirement that "[a]dequate provision shall be made. . . for the establishment, maintenance and operation of institutions of higher learning and other public education programs. . .." [FN236] This provision is particularly troubling because as Tocqueville said:

It cannot be doubted that in the United States the instruction of the people powerfully contributes to the support of the democratic republic; and such must always be the case, I believe, where the instruction which enlightens the understanding is not separated from the moral education which amends the heart. [FN237]

However, some interpret article IX, section 1 to require a particular level of school funding and would use it as a basis for allowing individuals to sue the state for additional educational funding. [FN238] If the judiciary were to expand on this simple statement, it could be used as a basis for requiring ***436** wealth transfers for the benefit of particular individuals or groups. Therefore, its continued inclusion in the Florida Constitution offers little value in exchange for the associated risk.

VII. Conclusion

For the most part, the Florida Constitution has served us well and should not be changed. In considering whether specific constitutional revisions should be adopted, we should ask ourselves the following questions: What is the appropriate relationship between government and the people, and is that relationship properly reflected in the social order that has developed under the constitution? If not, can the problems we find in the social order be addressed through the constitution? Are they fundamental in nature, or should they be addressed through some other means?

With regard to each of the three branches of government, as well as each officer and agency, we should ask if the system of checks and balances in the constitution is well-ordered, and whether the divisions of power are being respected. As a practical matter, we should ask whether the government is functioning well, or whether the people would benefit from some reorganization that must be accomplished through constitutional means.

In answering these questions, the text of the document as well as the purpose and ideas of the people who created the constitution should be honored. It was once said that "[t]he people reign in the American political world as the Deity does in the universe." [FN239] This statement was intended to mean that, collectively, the people exercise complete control over their government. If the Revision Commission accomplishes nothing else, we hope that it will take some small steps towards restoring the truth of that statement for the people of Florida.

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[FN1]. I Alexis de Tocqueville, Democracy in America (Phillips Bradley ed., Alfred A. Knopf 1945) at epilogue (1835).

[FN2]. See Allen Morris, The Florida Handbook 1995-1996, at 323 (1994). After he became President of the United States, Jackson continued to directly influence the philosophy of government in Florida through, among other things, the placement of his friends as state officers. Id. at 324-27. For example, Jackson played a prominent role in advancing the political careers of all five of the men who served as Territorial Governors of Florida. Id. William Pope DuVal, the first territorial Governor of Florida, was reappointed to that office by Jackson, and Florida's second Territorial Governor, John Henry Eaton, was a prominent member of Jackson's Cabinet. Id. at 324. Territorial Governor Richard Keith Call was a soldier under Jackson and was a close enough friend to have been married in Jackson's home. Id. at 325-26. Florida's fourth Territorial Governor, Robert Raymond Reid, who was serving as Territorial Governor when the Florida Constitution of 1838 was created, got his start in Florida politics when President Jackson appointed him United States Judge of East Florida. Morris, supra at 326. Even Florida's sixth Territorial Governor, John Branch, who did not take office until 1844, had previously served as Jackson's Secretary of the Navy. Id. at 327.

[FN3]. I Tocqueville, supra note 1, at 45.

[FN4]. Tocqueville's arrival in this country in 1831 preceded the drafting of Florida's first constitution by only seven years. Id. at epilogue. See generally Fla. Const. of 1838.

[FN5]. Fla. Const. of 1838, art. I § 26. This provision was adopted directly from language contained in article I, § 15 of the Virginia Constitution. George Mason has been credited with authoring the original provision. See Brian Snure, A Frequent Recurrence to Fundamental Principles: Individual Rights, Free Government, and the Washington State Constitution, 67 Wash. L. Rev. 669, 676 (1992). Different versions were subsequently incorporated into the constitutions of at least 11 different states. See Louis D. Bilionis, On the Significance of Constitutional Spirit, 70 N.C. L. Rev. 1803, 1811 (1992). See also Snure, supra, at 676 nn.50-54.

[FN6]. With regard to a similar "frequent recurrence" provision in the North Carolina Constitution, Bilionis quotes William Hooper, a North Carolina delegate to the Continental Congress in Philadelphia, as having said: "'[i]t is necessary that recurrence should often be had to original principles to prevent those evils which in a course of years must creep in and vitiate every human institution and by insensible gradations at length steal upon the Understanding as part of the original system.'" Bilionis, supra note 5, at 1811 n. 27 (quoting 10 Colonial Records of North Carolina 862, 867 (William L. Saunders ed., Raleigh, N.C., J. Daniels, 1890)). Mr. Hooper seems to have believed that returning to fundamental principles would involve some weeding out of inappropriate provisions that had crept into the constitution over the years. Id. In a similar vein, shortly after the 1838 Florida Constitution was adopted, President William Henry Harrison said:

> The spirit of liberty is the sovereign balm for every injury which our institutions may receive. On the contrary, no care that can be used in the construction of our Government, no division of powers, no distribution of checks in its several departments, will prove effectual to keep us a free people if this spirit is suffered to decay; and decay it will without constant nurture.

Inaugural Addresses of the Presidents of the United States (1989), William Henry Harrison: Inaugural Address (visited July 7, 1997) <http:// www.cc.columbia.edu/acis/bartleby/ inaugural/pres26.html>.

[FN7]. See Talbot D'Alemberte, The Florida State Constitution: A Reference Guide 15 (G. Alan Tarr ed., 1991).

[FN8]. While the public rejected the 1978 Commission's proposals, it later rejected a proposed amendment that would have abolished the Constitution Revision Commission. Id. See also HJR 50 (1979) (amending article XI, section 2 of the Florida Constitution, to eliminate the Constitution Revision Commission).

[FN9]. See D'Alemberte, supra note 7, at 15-16.

[FN10]. See id. (discussing a number of amendments originally proposed by the 1978 Commission that were rejected by the public, only to later be approved upon submission to the voters by the Legislature). Even so, the 1978 Commission might have been more successful if it had focused more on fundamentals and less on discussing sweeping changes in public policy.

[FN11]. See id. at 11-15. The 1965 Commission was created by the Legislature; the 1978 and 1997-98 Revision Commissions resulted from a recommendation made by the 1965 Commission that was adopted into the Florida Constitution of 1968. See id. at 15-16. While the proposed amendments produced by the 1978 Commission were submitted directly to the voters, the proposed amendments produced by the Commission of 1965 were submitted to the Legislature. The Legislature then substantially revised the proposals during four special sessions. The end product of those efforts was our current constitution, the Florida Constitution of 1968. Morris, supra note 2, at 680.

[FN12]. See generally D'Alemberte, supra note 7, at 14 (discussing the results achieved by the 1965 and 1978 revision commissions). During the late 1960s and early 1970s, many other factors contributed to a favorable climate for changes in public policy and in the state constitution. The public was grappling with the civil rights movement, political issues involving elections and voting rights, military matters relating to the Vietnam War, and criminal law issues such as search and seizure and the death penalty. Many of these issues rose to a level of federal constitutional significance and the public interest in constitutional law was considerably heightened. By 1978, public concern over many of these issues was less intense.

[FN13]. See Id. at 11.

[FN14]. See id. at 13.

[FN15]. See id. at 12. Frequent statements to the effect that the 1968 revision reduced the size of the Florida Constitution by half are somewhat misleading. See D'Alemberte, supra note 7, at 12. In fact, substantial portions of the Florida Constitution of 1885 were kept in force by including them in history notes and incorporating them by reference into the 1968 Constitution. See, e.g., Fla. Const. art. VIII, § 6(e) (incorporating by reference the Dade County Home Rule provisions of the Constitution of 1885). The 1997-98 Revision Commission should consider advancing the reductionist intent of the 1968 Commission by proposing amendments that would eliminate the need for these extensive and unwieldy historical notes.

[FN16]. D'Almberte, supra note 7, at 13.

[FN17]. Id. at 16.

[FN18]. See id. at 12 (discussing reductions in the Florida Constitution of 1968).

[FN19]. The need for stability in the social order and in the law demands that a constitution be changed infrequently and no more than is necessary to accomplish particular purposes. It has been noted that "stability in constitutional law promotes the formation and maintenance of a social consensus on basic values. It does so by encouraging [legislators] and courts to articulate basic values and to provide moral leadership for society." Michael G. Colantuono, The Revision of American State Constitutions: Legislative Power, Popular Sovereignty, and Constitutional Change, 75 Cal. L. Rev. 1473, 1509 (1987). Because it has the "potential to promote a consensus on social values[[[,]" stability in constitutional law "contributes to social cooperation and peace." Id. at 1510. Tocqueville noted with some dismay that "[a]lmost all the American constitutions have been amended within thirty years." I Tocqueville, supra note 1, at 267. He found that "the circumstances which contribute most powerfully to democratic instability, and which admit of the free application of caprice to the most important objects, are here in full operation." I Tocqueville, supra note 1, at 267.

[FN20]. See, e.g., Jonathan M. Hoffman, By the Course of the Law: The Origins of the Open Courts Clause of State Constitutions, 74 Or. L. Rev. 1279, 1282 (1995) (noting that "principled debate over a constitutional provision's application to contemporary circumstances can begin only after grappling with its historical antecedents"). This does not imply that we are forever bound by "original intent" or to the current contents of the constitution. The people are free to amend the constitution at any time. See discussion infra note 78 (discussing the different methods by which the Florida Constitution can be amended).

[FN21]. Like James Madison, we must support our constitution "as well in its limitations as in its authorities." Inaugural Addresses of the Presidents of the United States (1989), James Madison: First Inaugural Address (visited July 7, 1997) http://www.cc.columbia.edu/acis/bartleby/inaugural/pres18.html.

[FN22]. I Tocqueville, supra note 1, at 28. While he admired the system of government and the people of this country, Tocqueville did not always like what he found here. He abhorred the institution of slavery and his thoughts about slavery caused him to express his admiration for our social system with some reservations. For example, he commented: "I am far from supposing that the American laws are pre-eminently good in themselves: I do not hold them to be applicable to all democratic nations; and several of them seem to me to be dangerous, even in the United States." Id. at 322.

[FN23]. Indeed, the origin of at least one provision of the Florida Constitution, the guarantee of "access to courts" contained in article I, § 21, has been traced directly to a similar provision in the Magna Carta. See D'Alemberte, supra note 7, at 32. As Professor Robert Williams commented to the organizational session of the 1997-98 Constitution Revision Commission: "[T]he roots of this Commission reach deeply into history. . . ." Journal of the 1997- 1998 Constitution Revision Commission 14, 15 (June 17, 1997) (remarks by Robert F Williams). While the United States Constitution has no "access to courts" provision, a provision similar to the one in the Florida Constitution can be found in the constitutions of 39 states. See Hoffman, supra note 20, at 1279 (citing David Schuman, The Right to a Remedy, 65 Temp. L. Rev. 1197, 1201 & n.25 (1992)).

[FN24]. See, e.g., Randy J. Holland, State Constitutions: Purpose and Function, 69 Temp. L. Rev. 989, 990 (1996) (discussing the contributions of philosophers Charles Montesquieu, Jean Jacques Rousseau, John Locke, and common law scholars Edward Coke, Henry deBracton, and William Blackstone to the formation of early constitutions).

[FN25]. See John Locke, The Second Treatise of Government 54 (Thomas P. Pearson ed., 1952) (1690).

[FN26]. Tocqueville simultaneously explained the moral foundation of American law and distinguished it from the recently demised French aristocracy: "To the European, a public officer represents a superior force; to an American, he represents a right. In America, then, it may be said that no one renders obedience to man, but to justice and to law." I Tocqueville, supra note 1, at 98.

[FN27]. See id. at 81-82; see also Va. Const. art. I, § 1 (stating that "all men. . . have certain inherent rights, of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity").

[FN28]. Interference with any one individual's inherent right to freedom of conscience, for example, poses a threat to the rights of all individuals in the society. This in turn poses a threat to the society itself. Carried to the extreme, deprivation of liberty can threaten a government's continued existence. See, e.g., Daniel Webster, The Reply to Hayne, in The Great Speeches and Orations of Daniel Webster 227, 256 (Edwin P. Whipple ed., Fred B. Rothman & Co. 1993) (1870) (explaining that "the people may. . . throw off any government when it becomes oppressive and intlerable. . .").

[FN29]. See Locke, supra note 25, at 54 ("men being, as has been said, by nature all free, equal, and independent, no one can be put out of this estate and subjected to the political power of another without his own consent"). See also The Declaration of Independence para. 2 (U.S. 1776) ("Governments are instituted among Men, deriving their just [P]owers from the [C]onsent of the [[[G]overned. . . .").

[FN30]. See Fla. Const. art. I, § 1. While the principle espoused in article I, section 1, predates any constitution, the language of this provision was undoubtedly adopted from one of the earlier constitutions of the other states where similar provisions abounded. See, e.g., Va. Const. art. I, § 2.

[FN31]. See Holland, supra note 24, at 993 (noting that "[t]he people possessing this plenary bundle of specific powers were free to confer them on different governments and different branches of the same government as they deemed best."). Europeans had this discovery thrust upon them by the French and American revolutions.

[FN32]. As previously noted, constitutional law is predicated upon belief that all individuals possess certain rights which cannot be divested by government. See I Tocqueville, supra note 1, at 56. People join together under the umbrella of government so that they may better enjoy those rights. See Locke, supra note 25, at 54-55.

[FN33]. Locke speculated that primitive cultures had no need of constitutional law until someone among them rose to a position of tyranny. Locke, supra note 25, at 124. Mill proposed that the only justifications for government interference with individual freedom were "self-protection" and to "prevent harm to others." John Stuart Mill, On Liberty 13 (Currin V. Shields ed., The Liberal Arts Press, Inc. 1956) (1859).

[FN34]. It was the imposition of government against their will that caused people to develop systems of self-governance for their own protection. Locke, supra note 25, at 114.

[FN35]. See id.

[FN36]. See Robert N. Clinton, A Brief History of the Adoption of the United States Constitution, 75 Iowa L. Rev. 891, 892 (1990) (noting that the colonists were "[p]olitically. . . far removed from England". . . and "used to a significant measure of self- government"). Notwithstanding ultimate English oversight, "colonial Legislatures substantially enacted most laws and adopted policies for the colonies." See id.

[FN37]. I Tocqueville, supra note 1, at 41.

[FN38]. See The Declaration of Independence para. 2 (U.S. 1776). This document begins:

We hold these [T]ruths to be self-evident, that all [M]en are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness. That to secure these [R]ights, Governments are instituted among Men, deriving their just [P]owers from the [C]onsent of the [G]overned.

Id.

[FN39]. See Clinton, supra note 36, at 891. For the first five years of independence, there was no national document to bind the colonies together. Id. In 1781, the original colonies agreed to adopt the Articles of Confederation which, in reality, operated more like a treaty between the states than a constitution. Id. at 891 n.1. However, many of the states specifically conditioned their ratification of the Constitution on the ultimate adoption of a bill of rights by Congress. See id. at 911-12. Because of the inadequacies in the Articles of Confederation, the states reconvened in a second constitutional congress in 1787 which ultimately led to the adoption of the current United States Constitution in 1789. See generally id. at 891. Others feared that enumerating certain rights would lead to the conclusion that others did not exist. To allay those fears, Congress also adopted the Ninth Amendment which provides that "'[t]he enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.'" Clinton, supra note 36, at 911-12 (quoting U.S. Const. amend. IX). Still others feared that an enumeration of rights in a Federal Constitution might somehow be construed to supplant the states as the primary guarantors of individual liberties. See The Federalist No. 84 at 510-14 (Alexander Hamilton) (Clinton Rossiter ed., 1961) (discussing the reasons why the Constitution did not contain a bill of rights). To resolve this concern and others, a Tenth Amendment was adopted which provides that "[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." U.S. Const. amend. X.

[FN40]. See Holland, supra note 24, at 990. In response to a resolution passed by the Continental Congress in May of 1776, and the signing of the Declaration of Independence, all of the former colonies established new constitutional governments, and eight had drafted new constitutions before the end of that year. See id. at 989-90.

[FN41]. I Tocqueville, supra note 1, at 61; see also Holland, supra note 24, at 991-92 (noting that the framers of the United States Constitution had participated in writing and had lived under 18 state constitutions before they began their work on the Federal Constitution); James G. Exum, Jr., Rediscovering State Constitutions, 70 N.C. L. Rev. 1741, 1741-42 (1992) (noting that the framers of the Federal Constitution "drew heavily on the experience of delegates to state constitutional conventions"). Indeed, the foundation for the federal Constitution was the so-called "Virginia Plan" presented to the Second Continental Congress on May 29, 1878, as an alternative to amending the Articles of Confederation. See Clinton, supra note 36, at 898. It incorporated a governmental structure that already existed in many of the states, which was based on the writings of Locke, Montesquieu, and others. See id. at 911. See generally The Federalist No. 39 (James Madison) (comparing provisions of many state constitutions with those of the new Federal Constitution).

[FN42]. See Holland, supra note 24, at 992 (noting that dividing sovereign power was a novel idea).

[FN43]. Without regard to the form of government (or organization) being discussed, there is a tendency for power to consolidate or centralize over time in the hands of a single individual or just a few individuals. While all of the early state constitutions guarded against consolidation of power in the hands of government officials, it was years later before any steps were taken to curb corporate power. Pennsylvania considered adopting a provision into its first constitution that provided "'[t]hat an enormous Proportion of Property vested in a few individuals is dangerous to the Rights, and destructive of the Common Happiness of Mankind; and therefore every free State hath a Right by its Laws to discourage the Possession of such Property.'" Robert F. Williams, The State Constitutions of the Founding Decade: Pennsylvania's Radical 1776 Constitution and its Influences on American Constitutionalism, 62 Temp. L. Rev. 541, 557 (1989) (quoting Eric Foner, Tom Paine and Revolutionary America 133 (1976)). However, that proposal was rejected. It was during the Jacksonian era that states began to introduce constitutional restrictions on the powers of corporations and banks like those found in the 1838 Florida Constitution, which provided "[t]hat perpetuities and monopolies, are contrary to the genius of a free State, and ought not to be allowed." Fla. Const. of 1838 art. I, § 24 (1838). Even stronger more detailed restrictions on corporate power and influence were adopted into state constitutions during the late 1800s, immediately prior to and after the adoption of the Sherman Antitrust Act. 15 U.S.C. § 1-7 (1994). See, e.g., Snure, supra note 5, at 672-73, 682 (discussing numerous specific restrictions on monopoly power that were included in the state of Washington's Constitution of 1889). Avoiding concentrations of power continues to be one of the primary purposes of constitutional law, the decisions of which continually assert that "rights protection cannot be entrusted to a monopoly guardian." John Kincaid, Foreward: The New Federalism Context of the New Judicial Federalism, 26 Rutgers L.J. 913, 944 (1995).

[FN44]. See, e.g., Holland, supra note 24, at 991 (explaining that the newly independent states were fearful of any "central government, particularly one with substantial powers").

[FN45]. It was theoretically possible for people to join together and voluntarily place all political power in the hands of a single individual, or small group of individuals. "[T]he United States Constitution does not require a state to separate the exercise of its own sovereign power horizontally: among an executive, a Legislature, and a judiciary." Id. at 995 (emphasis added). It is possible, for example, for a state to create a democratic monarchy in which the people elect a queen and pass all of their powers over to her. However, the framers of the state constitutions universally chose not to follow that model. To do so would have been inconsistent with their heritage. See Locke, supra note 25, at xix-xxii (discussing Locke's thought that absolute monarchy is "inconsistent with civil society").

[FN46]. The key powers of government include the power to make laws, the power to execute the laws, and the power to pass judgment on the laws. See generally, Locke, supra note 25. Article II of each of the Florida Constitutions since the Constitution of 1838 has explicitly provided for the separation of these powers. See Fla. Const. of 1838 art. II (1839); Fla. Const. of 1861 art. II (1861), Fla. Const. of 1865 art. II (1865); Fla. Const. of 1868 art. II (1868); Fla. Const. of 1885 art. II (1885); Fla Const. art. II, § 3 (1968).

[FN47]. For example, the powers of judges are limited in numerous ways. They have no power to take action at all until some party properly invokes their jurisdiction, which is limited by the constitution and by general law. See Fla. Const. art. V (establishing certain courts and the boundaries of their jurisdiction, directing the Legislature to establish still other courts, and authorizing the Legislature to take certain actions with regard to the courts and their jurisdiction). The decisions of trial judges are normally subject to appeal by disappointed litigants, and the power of appellate judges is limited to ruling on cases appealed from lower courts. See id. at § § 3-5. Appellate judges also normally sit in panels and in order to rule they must secure the agreement of a majority of the other judges sitting on a panel with them. See also Fla. Const. art. V, § 3(a) (mandating that of the seven justices of the supreme court, five constitute a quorum and the concurrence of four justices is necessary for a decision); Fla. Const. art. V, § 4(a) (providing that in each district court of appeal, three judges consider each case and the concurrence of two is necessary for a decision). See, e.g., Fla. R. Jud. Admin. 2.030(a)(1) (establishing panel, quorum, and majority vote requirements for the Supreme Court of Florida). Similarly, no individual can exercise the power to make laws. Lawmakers must secure the agreement of a majority of the other legislators who sit in the Legislature with them before they can exercise any power at all. Fla. Const. art. III, § 7.

[FN48]. The constitutions of all 50 states contain a declaration of rights, bill of rights, or some other enumeration of individual rights.

[FN49]. Article I, section 1 of the Florida Constitution contains an "unenumerated rights lause" similar to the one found in the Ninth Amendment to the United States Constitution. Most other state constitutions contain similar provisions. See generally Louis Karl Bonham, Unenumerated Rights Clauses in State Constitutions, 63 Tex. L. Rev. 1321, 1321 (1985).

[FN50]. As James Madison said: "[A] double security arises to the rights of the people [because] [t]he different governments will control each other. . . ." The Federalist No. 51 at 323 (James Madison) (Clinton Rossiter ed., 1961).

[FN51]. The term "political minorities" must be distinguished from the currently popular usage of the word "minorities." A group of people in disagreement with the majority on any issue is a political minority group. A political minority, or majority, can be widely diverse in all other respects so long as its members share a common view on some political issue. The greatest strength-and weakness-of a properly functioning democracy is that while the composition of the political majority shifts and changes as frequently as the issues being considered, most of the people are in the political majority most of the time. The result is, as Tocqueville observed, that in the United States, all parties are willing to recognize the rights of the majority, because they all hope at some time to be able to exercise them to their own advantage. I Tocqueville, supra note 1, at 264-80.

[FN52]. See I Tocqueville, supra note 1, at 254-70 (explaining the view that in a democracy the omnipotence of the majority poses the greatest threat to the people).

[FN53]. After describing the dangers that result from absolute majority rule, Tocqueville went on to describe the solution:

> If, on the other hand, a legislative power could be so constituted as to represent the majority without necessarily being the slave of its passions, an executive so as to retain a proper share of authority [independent of the people], and a judiciary so as to remain independent of the other two powers, a government would be formed which would still be democratic while incurring scarcely any risk of tyranny.

I Tocqueville, supra note 1, at 272.

[FN54]. Many features of the Federal Constitution were modeled after the earlier constitutions of other states. See Holland, supra note 24, at 995; Williams, supra note 43, at 541. See generally The Federalist No. 1 (Alexander Hamilton) (drawing comparisons between the United States Constitution and the state constitutions).

[FN55]. See U.S. Const. art. IV, § 4 ("The United States shall guarantee to every State in this Union a Republican Form of Government. . . ."). Today when we refer to "republican democracy," it is generally understood that we are describing self-government by the people through the election of representatives who are subject to constitutional controls. See In re Apportionment Law Appearing as Senate Joint Resolution 1 E, 1982 Special Apportionment Session; Constitutionality Vel Non., 414 So. 2d 1040 (Fla. 1982) (distinguishing between democracy and republican democracy). However, this understanding has not always been so clear. See generally The Federalist No. 39 (James Madison) (discussing the many different forms of government to which the term republic had been applied). It has been said about our nation's founders that "'[o]nly one thing was certain, Americans believed that republicanism meant an absence of an aristocracy and a monarchy. Beyond this, agreement vanished. . . .'" Williams, supra note 43, at 550 (quoting Robert Shalhope, Toward a Republican Syntheses: The Emergence of an Understanding of Republicanism in American Historiography, 29 Wm. & Mary Q. 49, 72 (1972)).

[FN56]. See supra note 46 and accompanying text.

[FN57]. See Webster, supra note 28, at 220 (discussing the limits imposed on the federal government by the United States Constitution).

[FN58]. See supra notes 53-55 and accompanying text.

[FN59]. The question of whether the federal government derived its authority directly from the people or from the states for the benefit of the people has been a point of contention since the early days of our republic. In M'Culloch v. Maryland, 17 U.S. 316, 404-05 (1819), the United States Supreme Court concluded that "[t]he government of the Union. . . is, emphatically, and truly, a government of the people. In form and in substance it emanates from them. Its powers are granted by them, and are to be exercised directly on them, and for their benefit." Id. In response to that decision, a critic writing under the pseudonym "Amphictyon" wrote: "The Constitution is not binding on any state, even the smallest, without its own free and voluntary consent. . . . The respective states, then in their sovereign capacity, did delegate the Federal Government its powers, and in so doing were parties to the compact." Sources and Documents Illustrating the American Revolution 1764-1788 and the Formation of the Federal Constitution 309 (Samuel E. Morrison ed., 2d ed 1965).

[FN60]. See infra notes 101-08 and accompanying text (discussing the doctrine of nondelegation).

[FN61]. "The powers delegated. . . to the federal government are few and defined. Those which are to remain in the State governments are numerous and indefinite." The Federalist No. 45 at 292 (James Madison) (Clinton Rossiter ed., 1961).

[FN62]. See Holland, supra note 24, at 997. Many provisions of the Federal Constitution were included specifically to insure the independence of the states, and of course, the entire Bill of Rights was intended to limit the federal government's power over the people. Other amendments further define the federal-state relationship. See, e.g., U.S. Const. amend. II.

[FN63]. Florida became a unified entity in 1822 when East Florida and West Florida were combined into a single territory and did not become a state until 1845. See Morris, supra note 2, at 325. The federal government had established specific requirements that had to be met before a territory could be admitted to statehood, one of which was a requirement that the territory have a constitution establishing a Republican form of government.

[FN64]. The 1838 Florida Constitution was adopted in 1839 by a margin of only 104 votes. See Charlton W. Tebeau, A History of Florida 126 (1971).

[FN65]. See supra note 43 and accompanying text.

[FN66]. See Tebeau, supra note 64, at 126.

[FN67]. Some major works produced immediately prior to, or during, the framing of Florida's first constitution included Tocqueville's Democracy in America, first published in the United States in 1835. I Tocqueville, supra note 1. Justice Story's Commentaries on the Constitution was widely read and relied on by legal scholars, as was Blackstone's Commentaries on the Law of England. The framers of the 1838 constitution were also undoubtedly influenced by Jacksonian Democracy. This is evident both in the history of the 1838 convention and in the constitution itself. For example, the populists who swept Andrew Jackson into the White House feared the banking industry and its influence on government. See Andrew Jackson, Veto Message (July 10, 1832), in II Messages and Papers of the Presidents 576-89 (Richardson ed., 1897) (explaining that in his opinion "the existing [Bank of the United States] [was] unauthorized by the constitution, subversive of the rights of the states, and dangerous to the liberties of the people"). After taking office, Jackson abolished the central bank. See id. Historical accounts of Florida's 1838 constitutional convention relate that the convention continued for three times as long as originally planned because the delegates were deadlocked over banking provisions. See Tebeau, supra note 64, at 128. While its other provisions speak forcefully about freedom and liberty, the delegates gave the Legislature extensive power to regulate banks and corporations and even went so far as to forbid bankers from holding statewide office or serving in the Legislature. See Holland, supra note 24, at 1000. The state constitutions that were written during the presidency of Andrew Jackson. . . were often interested in popular sovereignty. Thus, the state constitutions of that time were often rights-conscious documents. Nearly all Jacksonian era state constitutions added or expanded Declarations of Rights and. . . placed them at the beginning of the document [as was the case with Florida's constitution of 1838]. Id. (citing James A. Henretta, Foreward: Rethinking the State Constitutional Tradition, 22 Rutgers L.J. 819, 819-839 (1991)) (citations omitted).

[FN68]. The best evidence we have of direct reliance on the federal document is in the constitutions themselves. Sections 12, 13, and 14 of the Florida Constitution of 1838, for example, are virtually identical to similar provisions in the Federal Constitution.

[FN69]. For a discussion of the 1861 Florida secession convention, see Ralph A. Wooster, The Secession Conventions of the South 6 (1962).

[FN70]. See Reconstruction Acts, ch. 152, 14 Stat. 428 (1867); ch. 6, 15 Stat. 2 (1867); ch. 30, 15 Stat. 14 (1867); ch. 25, 15 Stat. 41 (1868); ch. 3, 16 Stat. 59 (1868).

[FN71]. See Tebeau, supra note 64, at 247 (noting that the federal military presence continued in Florida after 1865).

[FN72]. The first Reconstruction Act divided the South into five military districts and placed Florida, as well as the other secessionist states, under formal military rule. See Act of Mar. 2, 1867, ch. 152, 14 Stat. 428 (1867). Military rule did not cause dramatic changes in Florida, since the state had been under military occupation since the end of the war anyway. The second, or supplemental, Reconstruction Act established procedures for conducting state conventions to establish new state constitutions that would satisfy certain requirements established by the federal government in the Act. See William Watson Davis, The Civil War and Reconstruction in Florida 446-47 (1964).

[FN73]. The 1867 convention was in itself highly controversial. See Richard L. Hume, Membership of the Florida Constitutional Convention of 1868: A Case Study of Republican Factionalism in the Reconstruction South, 51 Fla. Hist. Q. (1972). There were serious doubts about the credentials and authority of its participants. See Davis, supra note 72, at 491-516. In addition to the fact that the state was still under military rule, the voting districts were heavily gerrymandered to favor Republican candidates, and the referendum on the new constitution appears to have been further marred by widespread voter fraud. See R.L. Peek, Lawlessness and the Restoration of Order in Florida, 1868-1871, at 53-60 (1964) (unpublished Ph.D. dissertation, University of Florida) (on file with the University of Florida). One of the more extreme examples of the confusion that reigned in Florida during the years after the adoption of the Constitution of 1867 culminated in Governor Reed being forced to seek an advisory opinion from the Supreme Court of Florida to determine whether the Legislature had been successful in impeaching and removing him from office. See Davis, supra note 72, at 544-56. The court determined that Reed had not been removed from office, in part, because four members of Legislature that were necessary to achieve a quorum had accepted appointments to state office from Reed prior to the vote on his impeachment. Id. Reed had declared their legislative seats vacant prior to the impeachment vote; thus, the impeachment vote failed for lack of a quorum. Id. Before these issues were resolved, however, Lieutenant Governor Gleason, with the cooperation of Secretary of State Alden, had declared himself to be Governor. Id. Ultimately, Gleason was removed from office as the result of an action in quo warranto filed by Reed; Secretary of State Alden was impeached. Id.

[FN74]. See D'Alemberte, supra note 7, at 8-9.

[FN75]. For a general discussion of the amendments to the 1885 and 1968 constitutions, see Id. at 9-11. The complete text of each of the amendments to Florida's constitution, including the Constitution of 1885, can be found at the World Wide Web cite of the Constitution Revision Commission. See Revision Commission (visited July 7, 1997) <http://www.law.fsu.edu/crc/>.

[FN76]. See D'Alemberte, supra note 7, at 13.

[FN77]. See supra note 43 and accompanying text (discussing populist influences on the Florida Constitution of 1838).

[FN78]. See Fla. Const. art. XI. California has recently established a Constitution Revision Commission by statute. See Cal. Gov't Code § 8275 (West 1992 & Supp. 1997). Florida, meanwhile, is the only state that has an independent, constitutionally-established Constitution Revision Commission. Florida also has a constitutionally established Taxation and Budget Reform Commission, which has the power to make proposals relating to tax and budget issues. In addition to these two commissions, Florida also allows amendment through citizen initiative, legislative proposal, and constitutional convention. See Fla. Const. art. XI.

[FN79]. See Fla. Const. art. I, § 1.

[FN80]. See Fla. Const. art. II, § 3.

[FN81]. Besides the usual majority vote and quorum requirements, the Florida Constitution contains limitations on "special" and "local" legislation, id. at art. III, § 11, as well as on "appropriations bills." Id. at art. III, § § 12, 19. It also requires that bills be read three times, Fla. Const. art. II, § 7, that the title of a bill describe its contents, id. at § 6, and that every bill be limited to one subject. Id. These types of provisions were commonly included in state constitutions to limit the distribution of special privileges by the Legislature and to prevent surreptitious legislative action. See Holland, supra note 24, at 1001.

[FN82]. See Fla. Const. art. VIII.

[FN83]. See id. at art. II, § 3; art. III, § § 3(c)(1), 8, 16(c), (e), (f), 17. D'Alemberte attributes our strong system of checks and balances to a conscious effort on the part of those who created the 1885 constitution-from which many of the current constitution's checks and balances are derived-to cure the governmental abuses that occurred during the Reconstruction era. See D'Alemberte, supra note 7, at 8-9.

[FN84]. See Fla. Const. art. I, § 2.

[FN85]. The text of any constitution must, of course, be given great weight. Any analysis should begin with the literal meaning of the constitution's text, and, where the text is completely unambiguous, we should adhere to its plain language in determining what its creators intended. See, e.g., In re Advisory Opinion to the Governor, 374 So. 2d 959 (Fla. 1979) (construing the Florida Constitution by applying the plain ordinary meaning of the language it contains).

[FN86]. Where ambiguity exists, or where it has been injected by those who execute the laws or by judicial decision, we should look for clarification in the origins of our constitution and the reasoning of those who created it. See, e.g., Powell v. McCormack, 395 U.S. 486, 547 (1969) (relying heavily on the constitutional debates at the 1787 Philadelphia convention); Bailey v. Ponce de Leon Port Auth., 398 So. 2d 812, 814 (Fla. 1981) (noting that in construing state constitution courts must ascertain and give effect to the intent of the framers); Williams v. Smith, 360 So. 2d 417, 419 (Fla. 1978) (court must interpret state constitution in a way that will best fulfill the intent of the framers).

[FN87]. An early example of the interpretivist philosophy can be seen in the United States Supreme Court's decision in M'Culloch v. Maryland, in which John Marshall wrote that "a constitution [is] intended to endure for ages to come, and, consequently, to be adapted to the various crises of human affairs." M'Culloch v. Maryland, 17 U.S. 316, 415 (1819) (emphasis omitted). Thomas Jefferson responded to the decision in M'Culloch with the comment that "the judiciary of the United States is the subtle core of sappers and miners constantly working underground to undermine the foundations of our federal constitution." The Portable Jefferson 994-95 (Peterson ed. 1975). Yet, allowing room for some interpretation may

reduce the extent to which we feel compelled to include large bodies of otherwise unnecessary material in our constitutions. As Governor Coke of Texas once said: "It will be found universally true that those State constitutions which contain the smallest number of provisions, [and] which adhere most closely to fundamental declarations. . . have been the wisest and most enduring." John Walker Mauer, State Constitutions in a Time of Crisis: The Case of the Texas Constitution of 1876, 68 Tex. L. Rev 1615, 1634 (1990) (quoting S.J. 555, 14th Leg., 1st Sess. (Tex. 1874)). However, not every problem has an answer in the constitution, and it should not be interpreted to provide answers to problems that are not constitutional in nature. The answers to most legal problems-and to social problems that can be addressed by law-can be found in the common and statutory law. See Holland, supra note 24, at 1000-01 (discussing that most of what we conceive to be rights can be found in the "common law"). See also Akhil Reed Amar, Forward: Lord Camden Meets Federalism-using State Constitutions to Counter Federal Abuses, 27 Rutgers L.J. 845, 849-58 (1996) (explaining by hypothetical that violations of the Fourth Amendment right to be free of unreasonable searches could often be more successfully redressed under the state trespass laws). But see Hans A. Linde, Are State Constitutions Common Law?, 34 Ariz. L. Rev 215, 216-29 (1992) (discussing the unfortunate extent to which state courts merely parrot federal judicial opinions in applying state constitutions). Linde notes that "[o]nce the United States Supreme Court used the label "privacy' for claims of personal relationships and autonomy, any mention of "privacy' in a state constitution became talismanic, regardless of its origins, context, or evident purposes. . . ." Id. at 224 n.58. Where no answers can be found in the common or statutory law, solutions can be created through the democratic processes authorized under the constitution.

[FN88]. A constitution serves as the bedrock upon which the remainder of the positive law of a particular jurisdiction (in this case Florida) is built. If restricted to appropriate constitutional purposes, it should serve as one of the great forces for stability in the law and in society. To the extent that a constitution strays from those purposes, the government and the people are less well- served and their respective interests may be endangered. Of course, the difficulty lies in agreeing upon the things that are "constitutional" in nature. For example, the Chief Justice of the Supreme Court of Florida, Gerald Kogan, a member of the 1997-98 Constitution Revision Commission, suggested that a ban on certain kinds of fishing nets does not belong in the Florida Constitution. Journal of the 1997-1998 Constitution Revision Commission, No. 2 (June 17, 1997). However, those who disagree with Justice Kogan correctly noted that the citizens' initiative to ban fishing nets resulted from the Legislature's failure to pass a bill directed to the issue. See, e.g., David Cox, Constitution panel hears net-ban debate, Tampa Tribune, July 23, 1997, at A19; Citizens Should Be Able To Petition For Change. How?, Tallahassee Democrat, July 27, 1997, at B19.

[FN89]. See James M. Carson, The Constitution and the New Deal, Address Before the Birmingham Forum (Dec. 16, 1935), for an excellent description of constitutions as charters or contracts between citizens and government.

[FN90]. See supra notes 24-25 and accompanying text.

[FN91]. The Federalist No. 51 at 322 (James Madison) (Clinton Rossiter ed., 1961).

[FN92]. Tyranny can arise in other ways as well, such as from bureaucracy. Indeed, once a bureaucratic tyranny has arised it may be more difficult to eliminate than a tyranny of any other kind.

[FN93]. Morley stated:

> It may be said that the federal form was historically ordained, by the fact that the original thirteen colonies were separately established and had by the time of the Revolution developed widely differing political and social customs. Only a system which protected those diversities could combine these varying units in a general unity. But behind the determination to keep the rights of the several States inviolate was the even deeper determination to protect the citizens of these states from centralized governmental oppression.

Morley, supra note 93, at 10.

[FN94]. The Federalist No. 51 at 323 (James Madison) (Clinton Rossiter ed., 1961). Madison, in using the term "departments" was referring here to the three branches of government that exist in both the state and national governments. See id. ; Morley, supra note 91, at 232 n.1.

[FN95]. Constitutional republics are deliberately structured in a manner that results in some friction between the branches. As James Madison noted: "Ambition must be made to counteract ambition. .. . It may be a reflection on human nature that such devices [checks and balances] should be necessary to control the abuses of government. But what is government itself but the greatest of all reflections on human nature?" The Federalist No. 51, at 322 (James Madison) (Clinton Rossiter ed., 1961).

However, just as competitors in the private sector sometimes enter into tacit agreements not to compete, the branches of government may each sometimes quietly acquiese to encroachments on authority by the other two branches. With regard to the federal-state relationship it has been noted that "vigorous state constitutionalism is imperative because it perpetuates the scheme of dispersal of powers envisioned by the framers." Randall T. Shepard, The Maturing Nature of State Constitutional Jurisprudence, 30 Val. U. L. Rev. 421, 433 (1996). For the same reasons, it is equally important to maintain the checks and balances that exist within a state's government. See infra note 134 and accompanying text (discussing the valuable competitive elements of constituitional government).

[FN96]. The United States Supreme Court has not entered a decision finding an unlawful delegation of the lawmaking power since 1935. See Panama Ref. Co. v. Ryan, 293 U.S. 388, 433 (1935); A.L.A. Schechter Poultry Corp. v. United States, 295 U.S. 495, 550 (1935). Indeed, the Court has only rarely upheld any separation of powers principle. But see, Youngstown Sheet and Tube Co. v. Sawyer, 343 U.S. 579 (1952); INS v. Chadha, 462 U.S. 919 (1983).

[FN97]. See Fla. Const. art. II, § 3.

[FN98]. See, e.g., Pepper v. Pepper, 66 So. 2d 280, 284 (Fla. 1953).

[FN99]. See, e.g., Askew v. Cross Key Waterways, 372 So. 2d 913, 924 (Fla. 1978).

[FN100]. Fla. Const. art. II, § 3.

[FN101]. See Locke, supra note 25, at 82 ("[B]ecause it may be too great a temptation to human frailty. . . for the same persons who have the power of making laws to have also in their hands the power to execute them. . . .").

[FN102]. See Fla. Const. art. III, § § 1, 7.

[FN103]. See id at art. V, § 1.

[FN104]. See, e.g., Chiles v. Children A, B, C, D, E, and F, 589 So. 2d 260 (Fla. 1991).

[FN105]. See Locke, supra note 25, at 82 (asserting that "the legislative neither must nor can transfer the power of making laws to anybody else, or place it anywhere but where the people have").

[FN106]. For example, Chapter 120, Florida Statutes (The Administrative Procedures Act), allows agencies of the executive branch to engage in lawmaking by establishing rules that govern the behavior of businesses and individuals. Fla. Stat. § 120.54 (Supp. 1996). After creating their own rules, agencies execute the rules and even conduct adjudicatory proceedings with regard to those who claim to be adversely affected by the agencies' actions. Id. Thus, it is not atypical for a single individual-an agency head-to make laws, enforce the same laws, and adjudicate rights under those laws. Id. Florida appellate courts have allowed this melding of constitutional functions because the agencies rules and actions are subject to review in the courts. However, when an aggrieved individual proceeds in the courts against an agency's actions undertaken pursuant to Chapter 120, the agency's interpretations of both rules and statutes, and its findings of fact are generally presumed to be correct. See, e.g., Ameristeel Corp. v. Clark, et. al., 691 So. 2d 473 (Fla. 1997) (finding that a party challenging an order of the Public Service Commission must overcome presumptions as to the Commission's jurisdiction, reasonableness of the order, and deference owed to the agency's interpretation of the statute it is charged with enforcing); Krivanek v. Take Back Tampa Political Comm., 625 So. 2d 840 (Fla. 1993) (finding that the judgment of officials carrying out the elections process shall be presumed to be correct and reasonable); Xerox Corp. v. Blake, 415 So. 2d 1308, 1311 (Fla. 3d Dist. Ct. App. 1982), decision quashed by 447 So. 2d 1348 (Fla. 1984) (finding that tax assessment is presumed to be correct and any person challenging an assessment must present proof which excludes every hypothesis of legal assessment).

[FN107]. See Locke, supra note 25, at 75. However, he also noted that in areas governed by a legislative power that is not constantly in session, and in which the executive power is vested in a single individual who also has a share of the legislative power, that person might also be called "supreme." Id. at 85. Thus, under Locke's analysis, Florida retains supreme power in its elected representatives only by preventing its Governor from exercising any legislative power. This is perhaps why the framers of the Florida Constitution included an explicit prohibition against delegation of legislative power to the executive branch. See supra notes 101-08.

[FN108]. Locke, supra note 25, at 85-86.

[FN109]. See id. at 84-91.

[FN110]. See id. at 84; see also Fla. Const. art. III, § § 1, 13.

[FN111]. The constitution requires that there be between 30 and 40 senatorial districts and 80 and 120 representative districts. See Fla. Const. art. III, § § 1, 16. The exact number of districts is established by the Legislature, and as previously noted, there are currently 40 Senate Districts and 120 House Districts.

[FN112]. Id. at art. III, § 7. A two-thirds vote is required to override a law vetoed by the Governor. Id. at § 8.

[FN113]. Id. at art. III, § 3.

[FN114]. See Locke, supra note 25, at 86.

[FN115]. "Constant, frequent meetings of the legislative, and long continuations of their assemblies without necessary occasion, could not but be burdensome to the people and must necessarily in time produce more dangerous inconveniences. . . ." Id. at 88.

[FN116]. See Fla. Const. art. III, § 8.

[FN117]. The ability to override the Governor's veto with a two-thirds vote of each house of the Legislature establishes a constitutional control over the executive's veto power that prevents the Governor from gaining control over the Legislature through its use. See id. at § 8(c).

[FN118]. Id. at art. III, § 11 (prohibiting certain special and local laws.).

[FN119]. Id. at art. III, § 6 (governing general acts of the Legislature and appropriations bills, respectively).

[FN120]. The absence of similar rules in the United States Constitution leaves Congress free to engage in "logrolling," a practice that involves combining unpopular legislation with popular legislation to assure that the unpopular legislation will become law.

[FN121]. U.S. Const. art. VI (supremacy clause).

[FN122]. As Justice Douglas said about rights, "the law must have a broad base in morality, to protect man, his individuality and his conscience, against direct and indirect interference by government." William O. Douglas, The Right of the People (Alma Reese Candi ed., 1958). Without moral foundation the law would be arbitrary, and over time it would not be respected by those who are subjected to its power. Hence, without a moral basis for law, the government would ultimately lose its ability to motivate the people except through coercive means.

[FN123]. Murder, for example, is not wrong because it is illegal; it is illegal because it is wrong. The law against murder has a moral foundation in the constitution which is established for the benefit and protection of the lives, liberty, and property of those who live under it. Tocqueville's discussion of this country's laws in 1831 reflects an understanding that a society's laws can do little more than reflect the values of the people in that society. See generally, I Tocqueville, supra note 1, at 321-22. That linkage between the law and morality persists in the public consienceness and is frequently reflected in public commentary. See, e.g., Charles Whalen & Barbara Whalen, The Longest Debate: A Legislative History of the Civil Rights Act 227 (1985). The authors quote the speech given by President Lyndon Johnson upon signing of the Civil Rights Act of 1964 in which he stated with regard to racial injustice: "Our Constitution, the foundation of our Republic, forbids it. Morality forbids it. And the law I will sign. . . forbids it." Commenting on the Civil Rights Act, Johnson said: "Its purpose is to promote a more abiding commitment to freedom, a more constant pursuit of justice, and a deeper respect for human dignity. We will achieve these goals because most Americans are law-abiding citizens who want to do what is right."). Id. at 227-28.

[FN124]. Adam Smith, The Theory of Moral Sentiment 233-34 (D.D. Raphael & A.L. Mafie eds., Oxford 1976) (1759).

[FN125]. See generally Id.

[FN126]. See supra notes 97-106 and accompanying text (discussing the doctrines of unlawful delegation and encroachment).

[FN127]. Fla. Const. art. IV, § 1.

[FN128]. Locke, supra note 25, at 92. Locke, however, contended that there might be some instances in which the executive has the prerogative to act even against the law. See id. at 93-94.

[FN129]. See id. at 94 (noting that prerogative is always largest in the hands of the wisest and best princes, because it may always be quickly restrained if exercised against the public's will).

[FN130]. See Fla. Const. art. IV. One positive effect of these distributions of power is to establish numerous opportunities for citizen input and numerous ways by which citizens can redress their grievances. One arguably negative consequence is that there may be some duplication of government services with an attendant duplication of expense and inconvenience to those involved in the process. However, it is as true of the Florida Constitution as it is of the United States Constitution that while it imposes burdens that may seem "clumsy, inefficient, [and] even unworkable. . . . There is no support in the Constitution. . . for the proposition that the cumbersomeness and delays often encountered in complying with explicit constitutional standards may be avoided. . . ." INS v. Chadha, 462 U.S. 919, 959 (1983).

[FN131]. Fla. Const. art. IV, § 1.

[FN132]. Id. at § § 4, 6, 9.

[FN133]. Fla. Const. art. IV, § 4(a). The offices of Secretary of State and Treasurer/Comptroller were originally established in the Florida Constitution of 1838. Fla. Const. of 1838, art. III, § § 14, 23. Like all of the state's justices and judges, these executive branch officials were elected by a majority vote of both houses of the Legislature. See id. at art. V, § 11 (providing for justices and judges to be elected by the state Legislature). Id. at art. III, § 14 (establishing office of Secretary of State and providing for election by the Legislature); Id. at art. III, § 23 (creating and providing for election by the Legislature of a "Treasurer and Comptroller of Public Accounts"). This first constitutionally authorized Legislature was quite powerful in relation to the other two branches of government. In addition to its power to make all judicial appointments, and the power to appoint key executive branch officers, the Florida Constitution of 1838 vested sole authority to amend or revise the constitution in the hands of the Legislature. Id. at art. XIV, § § 1, 2. While the Governor was given veto power over legislation, the veto could be overridden by a simple majority confirming the Legislature's will. Fla. Const. of 1838, art. III, § 16. The Constitution of 1868 provided for the Governor to appoint and be "assisted" by a nine-member Cabinet of "administrative officers" consisting of a Secretary of State, Attorney General, Comptroller, Treasurer, Surveyor General, Superintendent of Public Instruction, Adjutant General, and Commissioner of Immigration. Fla. Const. of 1868, art. V, § 17. However, this expansion of the Governor's powers lasted only briefly. The Legislature amended the constitution in 1870 to once again provide for the popular election of Cabinet officers. See Amendments to the Constitution of 1868, General Assembly of 1870 (Article III, Cabinet Elections) (adopted February 12, 1870). Under the Constitution of 1868, the Governor and Cabinet served on a "Board of Commissioners of State Institutions," which, much like the modern Florida Cabinet, was assigned particular responsiblities by the Legislature. Fla. Const. of 1868, art. V, § 20. The Constitution of 1885 reduced the number of executive branch officers to seven, including the Governor, Secretary of State, Attorney General, Comptroller, Treasurer, Superintendent of Public Instruction, and Commissioner of Agriculture, and continued to provide for them to be elected rather than appointed. Fla. Const. of 1885, art. IV, § 20.

[FN134]. In the economic arena, it is commonly understood that competition drives down prices and produces higher levels of value for consumers. The early framers of constitutional government understood that in a divided government there would be competition among the different divisions, and their comments reflect that understanding. See, e.g., The Federalist No. 73 at 441 (Alexander Hamilton) (Clinton Rossiter ed., 1961) (explaining that in a divided government, no branch of government "[must] be left to the mercy of the other."). Id. at 442. Each branch "ought to possess a constitutional and effectual power of self-defense." Id. Madison described the purpose of presidential veto power in similar competitive language stating that "[t]he primary inducement to conferring the power in question upon the executive is to enable him to defend himself." The

Federalist No. 73, at 443 (Alexander Hamilton) (Clinton Rossiter ed., 1961).

[FN135]. A recent example of the extent to which the Cabinet can focus public attention on an issue involved a decision over whether to allow Florida Power and Light Company to burn a controversial fuel called "Orimulsion" at one of its power generating facilities. Individuals, environmental groups, and others offered testimony that consumed several days, generating hundreds of press reports. See, e.g., Orimulsion Hearings Delayed Until Jan. 15, St. Petersburg Times, October 22, 197, at F26; FPL Being Too Slick on Orimulsion Details, Palm Beach Post, October 17, 1997, at G27; Robert P. King, Tar Fuel's Next Stop: Indiantown?, Palm Beach Post, October 14, 1997, at E26; David Cox, Cabinet May Seek Delay in Hearing on Orimulsion, Tampa Trib., October 10, 1997, at C26; Jeremy Wallace, FPL Files Timeline for Fuel Hearing, Bradenton Herald, October 4, 1997, at D26; Jeremy Wallace, Orimulsion Hearing Set, Bradenton Herald, October 4, 1997, at B26; Alan Judd, FPL's Case on Fuel Sticky, Sarasota Herald-Trib., June 15, 1997, at A26.

[FN136]. A common complaint about Florida's elected Cabinet is that the agencies placed under Cabinet supervision lack accountability because they do not answer to a single individual. However, the vast majority of the Cabinet's responsibilities were established by the Legislature-not the constitution. See, e.g., Fla. Stat. § 20.24(1) (1995) (placing the Department of Highway Safety and Motor Vehicles under the control of the Cabinet); id. at § 20.21(1) (1995) (placing the Florida Department of Revenue under the control of the Cabinet); id. at § 20.201(1) (1995) (placing the Florida Department of Law Enforcement under the control of the Cabinet). The Legislature is free to reassign the Cabinet's current duties to the Governor, or to individual Cabinet officers, or to the extent that the Legislature believes the agencies under the Cabinet lack accountability it can impose additional controls. Thus, it does not appear that constitutional amendments are necessary to resolve this issue.

[FN137]. The Legislature has not always considered whether the functions it assigned to the Cabinet were of an executive, legislative, or judicial nature. While it is within the executive branch, the Cabinet now exercises some power associated with each of the three branches of government. The Commission should consider alleviating this condition.

[FN138]. The strength of the Office of Florida's Governor is commonly underestimated. The office, as it is currently comprised, is really quite strong, both in comparison to the office as it was comprised under earlier Florida constitutions, see supra note 133, and in comparison to the Office of Governor as it is comprised in other states. With the adoption of legislative and Cabinet term limits, see Fla. Const. art. III, § § 1, 2, 4, the Governor's position vis-a-vis the Legislature and the Cabinet has been strengthened. The Governor is the state's chief budget officer and shares that power with no other state official. Morris, supra note 2, at 13. The Governor's budget powers, and the ability to control programs, have been further expanded through an amendment to the constitution that gives the executive line item veto power. Fla. Const. art. III § 8. And, while the Governor does not appoint Cabinet officers he or she does appoint the member of over 438 state boards, and makes more than 4000 appointments during his or her term of office. Morris, supra note 2 at 18-19. Moreover, history shows that a Governor's greatest power is the opportunity as the state's chief executive officer to lead by establishing values and standards leading by moral suasion and example rather than by edict. See Id.

[FN139]. See, e.g., Fla. Const. art. XI, § 2(a)(2) (15 of the 37 members of the Constitution Revision Commission are appointed by the Governor. The Governor also designates the chairman); Id. at art. II, § 8(f) (providing for an independent Commission on Ethics); Fla. Stat. § 112.321(1) (1995) (five of the nine members of the Commission on Ethics are appointed by the Governor, subject to confirmation by the Senate); Fla. Const. art. IV, § 9 (all five members of the Game and Freshwater Fish Commission are appointed by the Governor, subject to confirmation by the Senate); Id. at art. V, § 12(a)(3) (five of the 15 members of the Judicial Qualifications Commission are appointed by the Governor); Id. at art. V, § 11(d) (providing for a judicial nominating commission to be established by general law); Fla. Stat. § 43.29(1)(b) (1995) (three of the nine members of the judicial nominating commission are appointed by the Governor); Fla. Const. art. IV, § 12 (providing that the Legislature may establish a Department of Elderly Affairs); Fla. Stat. § 20.41(1) (1995) (the head of the Department of Elderly Affairs is appointed by the Governor, subject to confirmation by the Senate); Fla. Const. art. IV, § 11 (providing that the Legislature may establish a Department of Veteran Affairs); Fla. Stat. § 20.37(1) (1995) (the head of the Department of Veteran Affairs is the Governor and the Cabinet. The executive director of the department is appointed by the Governor with the approval of three members of the Cabinet and subject to confirmation by the Senate).

[FN140]. Constitutional commissions and agencies include the following: the Constitution Revision Commission itself, Fla. Const. art. XI, § 2, the Taxation and Budget Reform Commission, Id. at art. XI, § 6; the Florida Game and Freshwater Fish Commission, Id. at art. IV, § 9; the Commission on Ethics, Id. at art. II, § 8(f); the Judicial Nominating and Qualifications

Commissions, Id. at art. V, § § 11(d), 12(a); the Department of Elderly Affairs, Fla. Const. art. IV, § 12; and the Department of Veterans Affairs. Id. at art. IV, § 11. Constitutional officers include the following: Governor, Id. at art. IV, § 1; Lieutenant Governor, Id. at art. IV, § 2; Cabinet officers, id at art. IV, § 4; the members of the Legislature, Fla. Const. art. III, § 1; the judiciary, id. at art. V, § 1; the clerks of the circuit courts, Id. at art. V, § 16; supervisor of elections, id. at art. VIII, § 1(d); state attorneys, Id. at art. V, § 17; and public defenders, Fla. Const. art. V, § 18; property appraisers, id. at art. VIII, § 1(d); constitutionally elected sheriffs, and tax collectors. Id. While they are not constitutionally required under all circumstances, the constitution authorizes the creation of county commissioners, Id. at art. VIII, § 1(e), and all 67 counties have done so.

[FN141]. To employ a simple example, if property appraisers were given unlimited power to appraise property without constitutional or statutory guidance, and without any controls by other agencies, officers, or courts, they would have tyrannical power within the area of authority given to them by the constitution. Even this modest power could be expanded to great lengths if not subject to adequate checks and balances. While the authors use the Office of Property Appraiser in this example, the authors do not intend to disparage property appraisers, or suggest that this particular office should be abolished or altered. The authors' purpose is to suggest that the Revision Commission examine constitutional offices to assure that they are subject to adequate checks and balances.

[FN142]. Some agencies and officers could, perhaps, be as effective if they were created by statute.

[FN143]. Locke, supra note 25, at 52.

[FN144]. See The Federalist No. 78, at 465 (Alexander Hamilton) (Clinton Rossiter ed., 1961).

[FN145]. See Locke, supra note 25, at 72.

[FN146]. Id.

[FN147]. Id. Having given up the authority to protect their own interests through force, individuals may now rely on the government to act on their behalf. Id.

[FN148]. See id.

[FN149]. See Locke, supra note 25, at 72-73.

[FN150]. Id. at 75.

[FN151]. See id.

[FN152]. Fla. Const. art. V, § 19.

[FN153]. I Tocqueville, supra note 1, at 145.

[FN154]. See generally id. (noting that the judiciary is an alternative to violent dispute resolution).

[FN155]. See Fla. Const. art. V (explicitly providing for the supreme court to review decisions of the district and circuit courts affecting the constitutionality of statutes, thereby implicitly establishing the power of "judicial review" in the lower courts). Id. at art. V, § 3(b)(3).

[FN156]. See generally The Federalist No. 78 (Alexander Hamilton).

[FN157]. See generally id. (noting that the judiciary is the least dangerous branch because they have neither the power of the sword nor the purse).

[FN158]. See Fla. Const. art. V, § 10(a).

[FN159]. See id.

[FN160]. See id. at art. V, § 11(a).

[FN161]. See Id. at art. V, § 8. No Florida judge has ever failed to survive a merit retention election.

[FN162]. The most striking expression of public concern over perceived judicial activism in Florida occurred when voters amended article I, section 12 of the Florida Constitution (search and seizure) to eliminate what they perceived to be an overly-broad judicial interpretation of the "exclusionary rule." See D'Alemberte, supra note 7, at 28; see Fla. Const. art. I, § 12 (requiring that interpretations of the Florida Constitution conform to the opinions of the United States Supreme Court). Proponents of the citizen initiative can point to that incident as an example of the need to maintain the right of citizen initiative to insure that state officials do not stray too far from the public will. See also supra note 7 and accompanying text (discussing citizen initiatives as a means of overcoming legislative gridlock). Many conservative analysts will find this an inappropriate delegation of state power to federal authorities.

[FN163]. See Fla. Const. art. I, § 1.

[FN164]. See generally The Federalist Nos. 46, 47, 48 (James Madison) (suggesting that when any branch is not limited by the system of checks and balances tyranny may result).

[FN165]. See Morley, supra note 93, at 27 ("'general government' must be given sufficient power to safeguard "the rights of the minority,'. . . "in all cases where a majority are united by a common interest or passion"') (quoting I Records of the Federal Convention of 1787, 134-35 (Max Ferland ed., Yale University Press (1937)). Tocqueville, who made many accurate predictions about the future of our country, remarked that "it may be foreseen that faith in public opinion will become for them a species of religion, and the majority its ministering prophet." I Tocqueville, supra note 1, at 11. In making this statement, he foresaw the current era of political correctness, which in modern society is the greatest tyranny that the people impose on themselves. Even in 1831, Tocqueville found that "[i]n the United States the majority undertakes to supply a multitude of ready-made opinions for the use of individuals, who are thus relieved from the necessity of forming opinions of their own." I Tocqueville, supra note 1, at 10. Based on his experiences in this country, he concluded:

> When an opinion has taken root amongst a democratic people and established itself in the minds of the bulk of the community, it afterwards persists by itself and is maintained without effort, because no one attacks it. Those who at first rejected it as false ultimately receive it as the general impression, and those who still dispute it in their hearts conceal their dissent; they are careful not to engage in a dangerous and useless conflict.

Id. at 261. Tocqueville further explained:

> Time, events, or the unaided individual action of the mind will sometimes undermine or destroy an opinion, without any outward sign of the change. It has not been openly assailed, no conspiracy has been formed to make war on it, but its followers one by one noiselessly secede; day by day a few of them abandon it, until at last it is only professed by a minority. In this state it will still continue to prevail. As its enemies remain mute or only interchange their thoughts by stealth, they are themselves unaware for a long period that a great revolution has actually been effected; and in this state of uncertainty they take no steps; they observe one another and are silent. The majority have ceased to believe what they believed before, but they still affect to believe, and this empty phantom of public opinion is strong enough to chill innovators and to keep them silent and at a respectful distance.

Id. at 261-62.

[FN166]. Fla. Const. art. V, § 8.

[FN167]. See discussion infra notes 234-238 and accompanying text.

[FN168]. Accordingly, one of the "important thrusts" of the local government article of the 1968 Constitution was to expand local government power by removing the Legislature's power to make local government decisions and turning that power over to local officials. D'Alemberte, supra note 7, at 123.

[FN169]. In 1831, Tocqueville noted:

> N[othing] is more striking to a European traveler in the United States than the absence of what we term the

government, or the administration. Written laws exist in America, and one sees the daily execution of them; but although everything moves regularly, the mover can nowhere be discovered. The hand that directs the social machine is invisible.
1 Tocqueville, supra note 1, at 72-73.

[FN170]. See I Tocqueville, supra note 1, at 40. Tocqueville noted with some admiration that in America "the township was organized before the county, the county before the state, the state before the union." Id. at 42.

[FN171]. See D'Alemberte, supra note 7, at 121-33 (discussing the prominent role of local governments under the Florida Constitution). See also, Morley, supra note 91, at 5. It was Morley's belief that "[t]he essence of federalism is reservation of control over local affairs to the localities themselves, the argument for which becomes stronger if the federation embraces a large area, with strong climatic or cultural differences among the various states therein."

[FN172]. See I Tocqueville, supra note 1, at 100. ("I [have] heard a thousand different causes assigned for the evils of the state, but the local system was never mentioned among them. I heard citizens attribute the power and prosperity of their country to a multitude of reasons, but they all placed the advantages of local institutions in the foremost rank.").

[FN173]. See generally The Federalist No. 39 (James Madison) (discussing the differences between a national and a federal government). Federal governments consist of a joining between the national government and the state governments. Id.

[FN174]. See generally Ann Althouse, How to Build a Separate Sphere: Federal Courts and State Power, 100 Harv. L. Rev. 1485, 1495 (1987). The courts have long ago concluded that federal and state constitutions leave some areas in which both the federal and state governments can act. However, this reasoning is contrary to the Ninth and Tenth Amendments to the Federal Constitution, which leaves no aspect of the power given by the people to the government undistributed. U.S. Const. amends. IX-X.

[FN175]. I Tocqueville, supra note 1, at 61.

[FN176]. Id.

[FN177]. Id.

[FN178]. Id. ("The Federal government. . . is the exception; the government of the states is the rule.").

[FN179]. U.S. Const. amends. XIII-XV.

[FN180]. See generally Randall T. Shepard, The Maturing Nature of State Constitution Jurisprudence, 30 Val. U. L. Rev. 421 (1996) (discussing the continuing evolution of federalist concepts).

[FN181]. See generally The Federalist No. 37 (James Madison) (explaining that federalism fosters stability for the federal government as well as the states).

[FN182].
Power being almost always the rival of power, the general government will at all times stand ready to check the usurpations of the state governments, and these will have the same disposition towards the general government. The people, by throwing themselves into either scale, will infallably make it preponderate. If their rights are invaded by either, they can make use of the other as the instrument of redress.
Akhil Reed Amar, Of Sovereignty and Federalism, 96 Yale L.J. 1425, 1494 (1987) (emphasis omitted) (quoting The Federalist No. 28 (Alexander Hamilton) (Clinton Rossiter ed., 1961).

[FN183]. See Erie R.R. Co. v. Tompkins, 304 U.S. 64, 78 (1938) (establishing that "[t]here is no federal general common law" and thereby limiting the ability of federal courts to "create" new law without a specific basis of authority such as state law, the United States Constitution, or federal statutes).

[FN184]. The original formulation of the adequate state grounds doctrine provided that where a state court entered a decision based on an "adequate state ground," such as a state constitution or state statute, federal courts would not intervene to disturb

the decision. Herb v. Pitcairn, 324 U.S. 117, 125 (1945). While its use has slowed the past few years, in the early 1980s the United States Supreme Court turned this doctrine on its head and used it as a device to assume jurisdiction over state court decisions based on state law. See, e.g., Michigan v. Long, 463 U.S. 1032, 1042 (1983). Until the Court returns to its early formulation of the doctrine it will be of no use in defining the boundary between federal and state governments.

[FN185]. See, e.g., William J. Brennan, Jr., State Constitutions and the Protection of Individual Rights, 90 Harv. L. Rev. 489, 491 (1977).

[FN186]. See D'Alemberte, supra note 7, at 15 (discussing the 1968 Commission's concern over federal intrusion on state authority).

[FN187]. See discussion supra note 25 and accompanying text. These rights are inherent in the individual. Constitutions do not create rights in any classic sense. Explicit identification of specific rights in constitutions is intended to assure that those rights will not be infringed. Governments have provided for the enumeration of rights in their constitutions because assurance of those rights is important to the continuation of democratic governments. As Tocqueville noted, "[i]f ever the free institutions of America are destroyed, that event may be attributed to the omnipotence of the majority, which may at some future time urge the minorities to desperation and oblige them to have recourse to physical force." I Tocqueville, supra note 1, at 279. The minorities referred to here are, of course, political minorities. See supra note 51.

[FN188]. See Fla. Const. art. I, § 1.

[FN189]. See discussion supra note 25 and accompanying text.

[FN190]. A useful way of examining rights to determine if they are inherent is to consider whether they can be lost. Truly inherent rights can never be lost. For example, the right of free speech can be dishonored or ignored, but it still exists within the individual. An expansive right to health care, at public expense, or public education would be a right that is dependent upon the cooperation of others for its implementation. It is not inherent in the individual and, unless enforced by the society, it ceases to exist. By interpreting the constitution to include disguised wealth transfers, we impair its moral basis thereby weakening the authority with which it speaks to other issues of a truly constitutional nature.

[FN191]. Locke, supra note 25, at 70.

[FN192]. Id. at 70-71.

[FN193]. Morley, supra note 91, at 37-38. The rights that individuals forego are not extinguished but are transferred to the society in the form of powers to be exercised on the individual's behalf. For example, the power to punish those who infringe our property rights.

[FN194]. See generally Locke, supra note 25.

[FN195]. I Tocqueville, supra note 1, at 73. See also Morley, supra note 90, at 34. Morley was of the opinion that "[w]hat we really mean by individualism is the latitude of a person to choose for himself among the many fruits of a civilization in which he actually participates. It is not merely unfair but also impossible to cut oneself off from the disagreeable results of collective action, while continuing to benefit substantially from those regarded as pleasurable." Id.

[FN196]. I Tocqueville, supra note 1, at 73.

[FN197]. See Morley, supra note 91, at 27-28.

[FN198]. See Mary Ann Glendon, Rights Talk, The Impoverishment of Political Discourse 14 (1991) (explaining that insistence on translating every interest into a right "promotes unrealistic expectations, heightens social conflict, and inhibits dialogue that might lead toward consensus, accommodation, or at least the discovery of common ground").

[FN199]. Morley, supra note 91, at 13.

[FN200]. See Locke, supra note 25, at 76-82. Under Locke's approach, government can receive no greater power than it is given by the people, and there are moral limits on the exercise of those powers. Accordingly, government power is subject to the same moral restrictions that existed in individuals before they joined in a society. See id.

[FN201]. Id. at 76.

[FN202]. Id. at 81.

[FN203]. See, e.g., U.S. Const. amend. XIV, § 1; Fla. Const. art. I, § 2.

[FN204]. Locke, supra note 25, at 81. Elsewhere Locke noted that "a rational creature cannot be supposed, when free, to put himself into subjection to another of his own harm. . .." Id. at 93. Thus, it must be assumed that all laws should be created for the benefit of those to be governed.

[FN205]. See Fla. Const art. VII, § 10(c); Linscott v. Orange County Indus. Dev. Auth., 443 So. 2d 97, 100 (Fla. 1983).

[FN206]. Locke, supra note 25, at 79.

[FN207]. See Fla. Const. art. I, § 9; U.S. Const. amend. XIV, § 1.

[FN208]. Locke, supra note 25, at 81.

[FN209]. Id. at 82.

[FN210]. See discussion supra Part IV.A.

[FN211]. See Fla. Const. art. I, § 2 (enumerating the inherent right to equal protection of the laws). The question of when a right is fundamental, such that it falls within the scope of the theory of inherent rights, can normally be determined by ascertaining the answer to one simple question: Can the right be exercised without the aid of the government or others? Sometimes the answer to this question can be ascertained by determining whether some wealth transfer is necessary to enforce the supposed right. If a right can only be secured through the government's coercion of others, then it is not an inherent right and is not, in any classic sense, a fundamental right.

[FN212]. Many rights are either not naturally available to isolated individuals, or would have no meaning to an isolated individual. See, e.g., Harold Demsetz, Toward a Theory of Property Rights, Am. Econ. Rev. 347-57 (1967). It was that author's view that "In the world of Robinson Crusoe property rights play no role. Property rights are an instrument of society and derive their significance from the fact that they help a man form those expectations that he can reasonably hold in his dealings with others." Id. at 347

[FN213]. Thomas Sowell, A Conflict of Visions 88 (1987).

[FN214]. See Lindsey v. Normet, 405 U.S. 56, 74 (1972) (explaining that even the United States Constitution cannot "provide judicial remedies for every social and economic ill").

[FN215]. See generally City of Cleburne v. Cleburne Living Ctr., Inc., 473 U.S. 432 (1985) (construing the Equal Protection Clause of the United States Constitution).

[FN216]. Locke, supra note 25, at 31.

[FN217]. It is important at this point to note the difference between constitutional rights and legislatively created rights. Subject to the limits imposed by the constitution, the Legislature is free to create statutory economic rights. See, e.g., Fla. Stat. § 440.01-.60 (creating the right to receive workers' compensation under certain statutorily prescribed circumstances).

[FN218]. Often these efforts are accompanied by demands for government spending or increases in taxation for the purpose of making various kinds of economic opportunities available to groups of people who are believed to be disadvantaged. See,

e.g., Allen W. Hubsch, The Emerging Right to Education Under State Constitutional Law, 65 Temp. L. Rev. 1325 (1992); Mary Ellen Cusack, Judicial Interpretation of State Constitutional Rights to a Healthful Environment, 20 B.C. Envtl. Aff. L. Rev. 173 (1993); Bert B. Lockwood Jr. et. al., Litigating State Constitutional Rights to Happiness and Safety: A Strategy for Ensuring the Provision of Basic Needs to the Poor, 2 Wm. & Mary Bill Rts. J. 1 (1993). These efforts are misplaced. As Locke noted, "[t]he great and chief end, therefore, of men's uniting into commonwealths and putting themselves under government is the preservation of their property." Locke, supra note 25, at 71. Government does not normally produce wealth; it obtains wealth through the taxation of its citizens. Establishing economic rights in certain individuals necessarily implies a need to take money from some other individuals to meet the demand imposed by the new economic right. In doing so, government risks impairing its relationship with those from whom it removes wealth for the benefit of others.

[FN219]. See, e.g., Adarand Constructors, Inc. v. Pena, 515 U.S. 200 (1995); City of Richmond v. J.A. Croson Co., 488 U.S. 469 (1989); Brown v. Board of Educ., 347 U.S. 483 (1954); Plessy v. Ferguson, 163 U.S. 537 (1896) (Harlan, J., dissenting), overruled by Brown v. Board of Educ., 347 U.S. 483 (1954).

[FN220]. U.S. Const. art. I; Fla. Const. art. I, § 5.

[FN221]. See Mary Ann Glendon, Rights Talk, The Impoverishment of Political Discourse (1991) (explaining that "[a]n intemperate rhetoric of personal liberty in this way corrodes the social foundations on which individual freedom and security ultimately rest").

[FN222]. Others have noted that interpreting rights too expansively can cause them to be so disrespected that they are destroyed. See, e.g., Gerald B. Cope Jr., Toward a Right of Privacy as a Matter of State Constitutional Law, 5 Fla. St. U. L. Rev. 633, 664 n.182 (1977) (citing Kurland, The Private I, U. Chi. Mag., Autumn 1976, at 11).

[FN223]. See discussion supra pp. 29-33. Equal protection of the laws requires that persons who are similarly situated be treated as though they are the same. Thus, if government chooses to confer benefits on individuals for arbitrary reasons it would run afoul of the equal protection requirement. Government can confer benefits, but it must comply with the law in doing so.

[FN224]. Government was not intended to be, and is normally not a wealth producer. Accordingly, the wealth it transfers to one must usually be obtained from others.

[FN225]. See U.S. Const. amend. XIV, § 1.

[FN226]. Locke, supra note 25, at 16-30.

[FN227]. Id. at 18-19.

[FN228]. Id. at 28.

[FN229]. Id. at 19.

[FN230]. Id. at 16-30.

[FN231]. For example, we now recognize a wide range of intellectual property.

[FN232]. Much like their peasant forebears who gleaned fallen grain from the fields of land owners, arbitrageurs now sit at computer terminals and "glean" small fractional profits by exploiting the differences in the price of stocks between the stock exchanges. Some have grown quite wealthy through this modern day gleaning process.

[FN233]. In modern times, we have developed stock markets in which anyone can buy an interest in a publicly traded company. The right to purchase or sell stocks at a future date is also a valuable property interest ("futures") that can be freely traded, and one can even purchase futures in the currency used to purchase stocks or other commodities ("currency futures").

[FN234]. D'Alemberte, supra note 7, at 16 (describing some constitutional language as "meaningless" but "politically

popular").

[FN235]. Id. at 17 (noting that some provisions of the Constitution of 1968 were merely "statements of asprirations"or were "precatory" in nature).

[FN236]. Fla. Const. art. IX, § 1.

[FN237]. I Tocqueville, supra note 1, at 329.

[FN238]. One attempt to secure an expansive interpretation of this language was a partial failure. See Coalition For Adequacy and Fairness in Sch. Funding, Inc. v. Chiles, 680 So. 2d 400 (Fla. 1996). However, because the court left the door open to future challenges, the suit secured a measure of success for those who wish to compel a higher level of school funding. See also Barbara J. Staros, School Finance Litigation in Florida: A Historical Analysis, 23 Stetson L. Rev. 497 (1994); Peter Enrich, Leaving Equality Behind: New Directions in School Finance Reform, 48 Vand. L. Rev. 101 (1995); John Powell, Segregation and Educational Inadequacy in Twin Cities Public Schools, 17 Hamline J. Pub. L. & Pol'y 337 (1996).

[FN239]. I Tocqueville, supra note 1, at 60. Tocqueville further comments that, "[i]n America, the people form a master who must be obeyed to the utmost limits of possibility." Id. at 64.

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*215 THE FLORIDA CONSTITUTION REVISION COMMISSION IN HISTORIC AND NATIONAL CONTEXT [FNa1]

Robert F. Williams [FNa2]

I am deeply honored to be invited to come here to talk to you. It's a terrific opportunity for me to return to my home state and to my home Capitol Building, even though I got started, as many of you did, in the old Capitol Building and the Holland Building. In the last twenty-four hours or so that I've been here, I've had a chance to see friends, classmates, mentors, and a whole range of people that I remember. I want to say at the outset, I envy you. Twenty years ago I was involved with the 1978 Commission, essentially as a lobbyist. Thirty years ago I was involved with the Legislature as it worked with the product prepared by the Constitution Revision Commission. [FN1] I dreamed that maybe this year I'd be sitting out there the way you are now. If I worked hard and continued my career here, I thought I might have had that opportunity. But instead, I took a different route. I'm one of the three or four people who ever moved from Florida to New Jersey and reversed the flow of the usual migration. I've spent the last eighteen years studying, teaching, and writing about state constitutions.

Why have I pursued such a course? It's because of what I learned here in Florida; the ideas I got from the people you know and have heard about in 1967, 1968 and 1978. I'm still pursuing those ideas and I hope to continue to do so. I would like to say that I want to make an early application here. Some of you will be appointing authorities [FN2] in 2017, and I would like to have a chance to sit out there. I'm still a dues *216 paying member of The Florida Bar, and I'm going to keep paying those dues for the next twenty years. In 2017 I'm going to be practicing law in the State of Florida, and I hope you'll remember me!

1997 is actually a very big year for state constitutions in this country. Of course, the main reason it's a big year is because this Commission is sitting. But you're sharing your enterprise with a number of people around the country. Some of you know that New York voters will decide in November whether to call a full-blown constitutional convention in that state. [FN3] California just completed a constitution revision commission which has filed its report. New Mexico recently, in the last year or two, completed a constitution revision commission. It's the 100th anniversary of the Delaware State Constitution. It's the 50th anniversary of our New Jersey State Constitution. Montana is celebrating its 25th anniversary. So, there's a fair amount of activity going on around the country with respect to state constitutions. I hope that you'll try to get in touch with those people and stay in touch with them because as unique as the Florida Constitution and the problems and potential of Florida are, you do share a number of things in common, I think, with others working on state constitutions in this country.

This morning I want to see if I can paint a picture for you of your place in the broad national context of state constitution-making and also link what you're doing to the deep historical roots of this enterprise of state constitution-making. Then, I want to talk a little bit about the unique and special characteristics of state

constitutions. Finally I'll reflect on the processes of state constitutional revision in the 1990s.

I'm not going to make any substantive recommendations to you. I'm sure you're glad of that. I think everyone is full of ideas already. Others may expect you to have your whole agenda formed in your mind, and I don't think you should do that.

I'm a little hesitant because I think opening speeches to constitutional conventions or constitutional commissions are like graduation speeches. The next day nobody remembers what was said. But I know that you know graduation speakers always say that. They always say, "I know you're not going to remember what I said." I didn't remember what the graduation speaker said at my graduation. But they go on and talk to you anyway, and try to be the one speaker who is different, and that's what I'm going to try to do. I hope I'll be able to succeed.

***217** You took your place yesterday as the next step in what's now a 221- year history of state constitution-making. It began in 1776 in wartime. Our New Jersey State Constitution began on July 2, 1776. That is an interesting date it seems to me.

The state constitutions of that period were the domestic political language of the Revolution. How should we structure our governments now that we've declared independence? Even though we're still fighting a war for independence, who should participate in our governments? What should our institutions look like? What kind of rights guarantees should be in these constitutions? These were the topics of debate during that ten years while we fought the war, won the war, and struggled trying to get a federal constitutional convention together. [FN4]

So the roots of this Commission reach deeply into that history; directly to James Madison, Ben Franklin, and John Jay; all men in those days, of course, white men who learned about constitution-making working on state constitutions a decade before they got famous and worked on the Federal Constitution.

These roots are not only deep. They're also wide. They spread all across the United States to all the states which have adopted and revised state constitutions. These roots also spread to federal systems all around the world. Eighteen or twenty countries, such as Switzerland, Germany, Brazil, Mexico and Australia, use sub-national component units or states the way we do. Most countries don't, of course. It's too inefficient; it's too much trouble.

You are now engaged in an enterprise that is being worked on in South Africa, as they draft the provincial constitutions, their equivalent of state constitutions. The former East German states, called L nder, have just finished a process of revising their subnational constitutions, most of them with the help of constitutional commissions. So, the now reunified Germany is made up of component units, each of which has a state constitution. These processes are also going on in Russia. Brazil, last decade, completed the process of revising state constitutions. Actually we have a lot to learn from each other even around the world, not just in other states in the United States. [FN5]

***218** Subnational or state constitution-making in a federal system is experimental. You've heard states referred to as the laboratories of federalism, the laboratories of experiment. [FN6] And since the beginning of our country we have recognized state constitution-making as experimental, as trial and error. Even as early as 1778, Tom Paine, who was famous because he advocated independence from England, was also a very important state constitutional thinker in Pennsylvania. He applauded "the happy opportunity of trying a variety, in order to discover the best. . . . By diversifying the several constitutions, we shall see which State flourish the best, and out of the many posterity may choose a model. . . ." [FN7]

Down through 221 years, this tradition of experimentation has come to us. We've had hundreds of state constitutional conventions and state constitutional commissions in this country, thousands of state constitutional amendments, and about 150 separate state constitutions. From the beginning those experiments in the thirteen original states served as models for the Federal Constitutional Convention. Actually, if you ever decided that you wanted to sit down and read the debates of the Federal Constitutional Convention, you'd see that a lot of what those debates were about was whether they should follow the New York model or the Massachusetts model. Nobody wanted to follow the Pennsylvania model, and nobody wanted to follow the New Jersey model. It's very interesting and it's no accident that, literally, the first line of the Federalist Papers addressed to the people who were worried about the new Federal Constitution said, in effect, "New Yorkers, don't worry. This new Federal Constitution, it

really looks a lot like your New York State Constitution." Actually, it might be the second line of the Federalist Papers, but it's right up front. [FN8]

After the Federal Constitution was adopted, the state constitutional tradition continued on its own course, a course different from that in federal constitutional law. Through this period of time, of course, state constitutions were both cursed and praised. But there's one thing that's clear about this process of the evolution of, and experiments with, state constitutions. It gave a chance for voices to be heard in constitution-making, ***219** voices that were never heard in the federal constitutional process.

The fifty-five white men who drafted the Federal Constitution obviously were not a diverse group. State constitution-making, though, has heard the voices of women, African-Americans, Native Americans, and Latino people; all kinds of people in our country have had a chance to be involved on one level or another with state constitution-making. And, of course, that's continued in this Commission today.

States continue to be the laboratories of experiment in the federal system. States continue to copy ideas one from the other, or to reject ideas that have been tried in other states and haven't worked. The federal government continues to look to the states for models to emulate. One only has to look at the current debates over the line-item veto in Washington. That was invented in the states. Other examples abound. The constitutionally mandated balanced budget was invented in the states. Term limits were invented in the states. Constitutional victim's rights provisions were invented in the states. You're the direct descendants of these two centuries of experimentation.

Now, these experiments, these processes that we've seen unfold over two centuries have reflected two kinds of experimentation. One has been with the content or the substance of the state constitutions. That I'm not going to talk about: what should be in there, what kinds of institutions, what kinds of rights. I'm very interested in that, but it's not my topic here with you today.

The other kinds of experiments have been procedural or process-oriented experiments. Throughout these two centuries, the debate has focused on how we can change state constitutions. Should you be able to change state constitutions? How easy should it be? How often should you do it? The question that's asked by one group is, how stable should the state constitution be? Asking your question that way suggests an answer. But the other way to ask that same question is, how rigid should state constitutions be? Asking the question that way seems to suggest a different way of looking at state constitutions. One view is, keep it the way it is, stability is important. The other view is that if it's rigid, it can block progress. Of course, we've seen that rigidity in many states, including Florida before 1968 and possibly even today.

The first state constitutions didn't provide for their own amendment and revision. The New Jersey Constitution was adopted July 2, 1776, which is a date we all like to talk about in New Jersey because we beat the Declaration of Independence by two days. That constitution interestingly said that, if we settled with the British, if we settled the "current controversy," as it was called, the constitution would be null and void. It didn't say anything about what would happen if we lost. ***220** They knew what would happen. They would be hanged as traitors. But it also didn't say anything about what would happen if we won. So we did win the Revolution, and New Jersey was stuck for eighty years with a constitution that nobody knew how to change. Finally, after a lot of debate, people realized that the Legislature could pass a bill calling for a state constitutional convention. So, we did have a convention in 1844.

This whole process question about how you revise or modernize a state constitution has bothered Americans since the beginning, and it still bothers us. I suspect it bothers you somewhat. How much change? How quickly? These kinds of things. When we began, our New Jersey State Constitution was drafted by the State Legislature, if you can call it that. It was really a revolutionary congress. We really didn't have the attributes of higher law that we think of for a constitution now.

Pretty quickly, though, Delaware and Pennsylvania invented the constitutional convention. It's one of America's great contributions to the constitutional learning of the world. This idea was refined in 1780 in Massachusetts where they had an elected convention and then submitted their product to the voters, who adopted it. They had voted down a constitution in 1778 during wartime, probably because it came from the State Legislature and not from an elected convention. So, that was one model, the elected convention with submission to the voters for ratification.

Soon we developed the limited constitutional convention. The limited constitutional convention is a terrific, creative response to the forces of the status quo. It's a way of saying that there are certain things that are too politically difficult to tackle, so let's just take them off the table and work on some other things. We still would have the 1776 Constitution in New Jersey if we hadn't had the ability to have a limited constitutional convention, which protected the equal representation for counties in the Senate prior to one person, one vote. That Senate structure was a very important thing, frustrating change.

About 120 years ago we saw the advent of the constitutional commission, originally limited constitutional commissions, like the Article V Task Force here. I would say that that was a limited constitutional commission focused on one reform topic.

Utah, fairly recently, has invented the continuous revision mechanism through a permanent commission. Alaska is considering that now.

But in Florida, in 1968, we invented something new under the sun: the appointed, unlimited, automatic Constitution Revision Commission which has direct access to the ballot. The Commission that you serve on today is the culmination of this process of trial and error, of trying to deal with the question of whether the state constitution should be immutable or mutable, changeable or static. The automatic feature, for ***221** many years, I thought was the idea of Chesterfield Smith or Sandy D'Alemberte or somebody like that. Some of you know that there's another guy who had the idea first; it was Thomas Jefferson. Jefferson thought the constitution should reflect the views of the living generation "so [the Constitution] may be handed on, with periodical repairs, from generation to generation." [FN9]

Jefferson hated the 1776 Virginia Constitution. So he, of course, wanted periodic revision of it. I think in some ways your answer to the question "Should the constitution be stable?" draws on what you think of the current constitution, obviously. So I guess you can trace your roots directly to Thomas Jefferson, which is probably uplifting, depending on what you think about Jefferson. On the other hand, he would probably call you repair people, merely repairing the constitution to pass it on to the next generation.

The alternative to this was John Locke. John Locke, having no problems of limited ego, did a draft constitution for the Carolinas that provided that it would stay in effect "forever." This was an amazing idea, but it was never adopted.

Like New York, about fifteen states now have an automatic vote on whether to have a constitutional convention or not. But you're quite unique in this commission that you have now. It is interesting that it has not been copied by any other state in thirty years. The experiment, I take it, is still under way. The final results aren't completely in, it seems to me. But this process has certainly stood the test of time in Florida. If I remember correctly, there was an amendment on the ballot to abolish the commission. That was voted down. The commission has been emulated. The Tax and Budget Reform Commission utilizes this process, and has worked all right, depending on how you look at its product.

All through this process we see changes in state constitutions, both with respect to what they contain, and changes with respect to the processes by which they would be updated or changed. The Englishman, James Bryce, came to the United States in the 1880s, observed the American governmental institutions, and commented that the American state constitutions were "a mine of instruction for the natural history of democratic communities." [FN10] Forty years later, an American, James Dealey, said, "One might almost say that the romance, the poetry and ***222** even the drama of American politics are deeply embedded in the many state constitutions." [FN11] So, I think whether you like natural history or whether you like romance and poetry, there's something in the state constitutional tradition for you. Certainly, looking into the Florida Constitution you can see poetry, romance, natural history, and some other things, of course. [FN12]

So, this Commission is the latest gadget, the most recent invention in the technology of state constitutional change. It operates to shift the burden of political inertia away from the status quo and toward the possibility of change. It's an alternative to a constitutional convention where the people have to vote whether they want a convention at all, as

we'll see in New York later this year.

I believe what we've learned about the way constitutional conventions operate can inform us about how you're likely to operate and how you might take your responsibilities. I think you really should consider yourselves delegates now that you have been appointed and sworn in. You should consider yourselves a constitutional convention because you will operate from here forward with all of the attributes of a constitutional convention in the traditional sense, except that you don't have an elective constituency. Maybe that's a good thing, for a lot of you it's probably a relief. Each one of you now has a statewide constituency which in other respects is only shared by the Governor, the Cabinet members and the United States Senators from Florida.

The 1978 Constitutional Revision Commission, to my way of thinking, was the most open, deliberative and well-documented process of state constitutional revision in the history of this country. That took place before the Internet, e-mail, most kinds of video, and these sorts of things. I don't think that today we see that Commission as the failure that we once saw. I remember that crushing feeling the next morning when the package was defeated. Some people remember that as a feeling of elation, I'm sure, when that package was voted down. As you know now, that package set the agenda for this next generation of state constitution-making and, ultimately, was not a failure at all. [FN13]

This Commission promises to be even more open and more interactive, from the things I've heard, with the technology that we have. I think, frankly, you may have to be even more interactive with ***223** the public if you want to be successful. I'll talk about that in a couple of minutes. You've got a terrific groundwork laid already by the Collins Center for Public Policy, the Article V Task Force, the Constitution Revision Commission Steering Committee, The Florida Bar, and probably some others. All kinds of people have offered their assistance to you. I think you should know that people in other states are watching you. People are very curious about this process. Even when I came here, some of you asked me: "Is it true? Are we unique?" Yes, you are. And, for that reason, people are very, very interested in how this process is going to work.

It remains to be seen whether the State of Florida will become one of Tom Paine's states that "flourish best," or whether the experiment ultimately will fail. I think we're in a kind of crisis in the process of state constitutional change in this country now. So it's more important than ever that this experiment serve to teach people around the country.

Yours is an unlimited commission. I think that's good and bad. You have an open mandate. But it means you'll have to focus; you'll have to set priorities. You'll probably have to limit yourselves. This is part of the mandate from the generation of 1968. Once you're appointed, you set the agenda for what you're going to do.

The general climate is as follows: the public is generally unaware of the state constitution. There was a survey ten years or so ago that indicated over half of the public didn't know they had a state constitution, and I think about half of the lawyers don't know there's a state constitution. The judges know. But even sophisticated professionals are not very conversant with the state constitution at any level of detail. So, I think you have a dual task. One is to fully educate yourselves about the state constitution and its processes of change. Then you need to help educate the public.

What are these state constitutions we're talking about? Because they're called constitutions people think that they are like the Federal Constitution, that they're little federal constitutions. People believe they're clones of the Federal Constitution. No, they're not. American state constitutions occupy a unique place in the legal and political technology of our constitutional federalism. They are unique in their origin. They're unique in their hierarchal place in the pecking order of our legal system. They're chameleon-like, oddly enough. Within the state, they are the supreme law of the state. They're constitutional documents; they take precedence over all other forms of state law.

At the same time they're subservient. They're lesser forms of law. They give way to any contrary federal law, including federal common law, and even federal administrative regulations, if they're valid, trump the state constitutions. So, it's a funny kind of animal.

***224** State constitutions also include things ranging all the way from what we think of as the great ordinances of constitutions, such as the due process and equal protection requirements and a scheme for the separation of powers,

to trivial, lesser kinds of constitutional legislation and legislative detail. For this a lot of people have poked fun at state constitutions as not really being constitutions. [FN14] My view is that they really are constitutions, but they're different from the Federal Constitution; people have to understand that and accept it.

Well, how are they different? Let's look at this uniqueness for a minute. They're different in their legal and political function. You heard yesterday from Chesterfield Smith the basic notion that the Federal Constitution enumerates delegated powers and then has the Bill of Rights as kind of an afterthought, or really a deal to get the Federal Constitution adopted. The state constitutions, by contrast, limit otherwise plenary or residual power that the states never gave away to the federal government. So, you do not have to find something in the legislative article that authorizes the Legislature to pass a divorce law, a law about wills, or a criminal statute. That is within the reserved plenary power of the Florida Legislature that is unlimited, except by the state constitution and by the Federal Constitution.

Now this is slightly overstated. If you look carefully at any state constitution, you'll say, "No, that isn't right, or it's not 100 percent right, because there are enumerations of power in the state constitution." For example, the Supreme Court of Florida has the power to promulgate rules of practice and procedure. It has the power to regulate the Bar. That's a grant of authority. The Game and Fresh Water Fish Commission has the legislative and executive power to regulate hunting and fishing. These are grants of power. These are enumerations of power. Sometimes you'll see an enumeration of power to overcome a judicial decision interpreting the state constitution to prohibit some exercise of power. The way to overcome that decision is to amend the constitution to grant the power. But, interestingly, almost all of these things transform themselves from grants of power to limits on the Legislature. The power of the Supreme Court to promulgate rules of practice and procedure limits the Legislature. The authority of the Game and Fresh Water Fish Commission limits the Legislature. The way to figure out if you can hunt on Sunday is to look up the regulations of the Commission, ***225** not the statutes. So those grants operate as limits on the Legislature.

If these constitutions have a different function, if they work differently, I wonder if they look different. Yes, they do. They're longer, they have a different form, and they're layered. They reflect a mine of natural history of democratic communities, poetry, and all those things. They have specific limits in them.

If you look at your legislative article, for example, you will see that it is filled with procedural restrictions on the Legislature. If the United States Constitution had Florida's legislative article, we wouldn't have had the shenanigans over the last month about the unrelated government shutdown-rider being attached to a disaster relief bill. But they don't have that limit. They've got the slim, brief, thought-to-be model constitution. It's so great because it's short. I'm not so sure it's better in that respect.

The detailed finance and tax article, local government article, and education article all deal with matters that are uniquely within the reserved powers of the states. You wouldn't have to have them at all. You wouldn't need a finance and tax article. You wouldn't need an authorization to the Legislature to levy taxes or borrow money. I'm not sure how comfortable all of us would feel without those articles, though I mean no offense to the legislators. People believe that those are things that should not be left exclusively to the Legislature.

We have an expanding vision from the original state constitutions. They grew over the years. We have an expanding state constitution that ends up being pretty long. Every time you want to do something within those areas that contain detailed limits, you have to make an exception; that makes it longer. So it doesn't follow the common vision of what a real constitution should look like when people think in a one-dimensional way, a way modeled exclusively on the United States Constitution.

If state constitutions work differently and look different, maybe there should be a different way to change them. There is, as you know. As we've discussed, the text of the state constitution is much more volatile and fluid than the Federal Constitution. The Federal Constitution is essentially unchangeable with some few exceptions. That's not true at all for the state constitutions, yielding a slight paradox. These are constitutional documents, protecting rights; yet they can be changed by a majority vote. [FN15] In any event, state constitutions are tools of lawmaking. ***226** They're instruments of government, and it's clear that state constitution revision does take place within the larger mechanisms of state politics. None of you need to be told this, but I think we have to remain aware of it. State constitutions are political. State constitution revision is political, and that's fine.

Just a few more points about what I think is the current climate for state constitutional change. I don't think it's a pretty picture, frankly. Public discontent with government is one of the things that fuels the initiative movement. The initiative is thought to be independent of government. The problem with it, as everybody has pointed out, is that it doesn't have the deliberative-compromise potential that the regular institutions of government have.

Political scientist Gerald Benjamin was Research Director for the New York Temporary Commission on Constitution Revision, which laid the groundwork for the vote coming up in November on whether they should have a constitutional convention or not. He identified a dilemma that we have in current government discussions now: "[T]he public wants big change in government but has rejected the most thoughtful and deliberative methods of achieving such change." [FN16] They've rejected the calls for constitutional conventions in essentially all of the states that have had the automatic calls. [FN17] In Florida, you get to jump over that hurdle.

The question, I think, is quite clearly whether you as a Commission can operate in a way that will convince the public that you are independent of the regular processes of government. I think you have the potential to do that. Gerald Benjamin says, "To channel the public discontent now targeted at state governments we need a method of constitutional revision which is independent of existing governmental institutions." [FN18]

This Commission is independent of regular governmental institutions and it does have that potential. I think you're going to need to consider testing the waters for possible change, possibly before you reach your final conclusions. The public hearing process may help in that respect, but I think there are lessons to be learned from the initiative process, including possibly, some polling.

There's a thing called the deliberative opinion poll which is supposed to model what the public would think about something if they were fully ***227** informed. [FN19] It seems like a fancy focus group, although I'm not sure. Focus groups may be useful. An interactive process a two-way flow of information that would merge direct-democracy's independence from regular governmental institutions combined with the deliberative consensus-building process that you have available to you may be required.

Obviously, it's very important to try to gauge opposition or status quo instincts ahead of time. A massive study of seven constitutional conventions concluded, "Just as the delegates and the political activists in each state tend to break down, ultimately, into reformers and supporters of the status quo, so the electorate divides in a similar fashion. . . . In short, constitutional revision potentially polarizes state communities, or the attentive portions of them, along predictable lines." [FN20]

There is a list of things that you're going to have to try to think about doing. You've heard some of them already from some of the speakers. But I think your most important job is to try to keep an open mind for now. Give yourself time to come to understand this state constitution. A lot of you know a lot about it already. I know that. But you may not have thought about it in every possible way. Try to assess how the Florida Constitution really touches the lives of Florida's people and how it touches government. Obviously, much of what goes on in government is not dependent on the State Constitution. Maybe if there are problems, they don't need to be remedied in the state constitution. You need to get a picture of the places where the government and the people touch the State Constitution. Otherwise, I don't think you can tell what, if anything, needs to be done.

I think you have to give yourselves time to come together as a collegial body. This is a different institution from the Legislature. It's a different institution from a city commission or anything like that. With two exceptions, all of you are freshmen in this. You may have done a lot of things in politics, but you haven't done this before. It's different. This body will develop a collective personality; it's group dynamics. It is different from other political bodies because you don't have to run for re-election. You didn't have to run a campaign to get here, at least an election campaign. What I'm really suggesting is that you try to transform yourself into Commissioners from what you were the day before yesterday and what you'll go back to being as this process ***228** continues. That's partly why I think the Chairman asked you, from now on, to call everybody "Commissioner," not Chief Justice or President or whatever. It seems like a surface tactic, but it actually has some potential to bring you together in a different way.

Try, if you can, to distance yourself somewhat from your current, regular constituency. You do have a statewide constituency now. If you can, distance yourself from your appointing authority, at least in some respects. You need to do this to make the inside job work, to be able to work together over the next year in this process. It's going to go beyond the next year if you think about the ratification campaign, if you suggest any changes. You need to have independence to work inside this chamber together and also to present an independent face to the public. Selling your product to the public is your outside job.

There were a lot of reasons why the 1978 revisions were defeated. That was the beginning, really, of the current negativism about government. 1978 was the year of Proposition 13, and I think it has just gotten worse. Many people are not willing to trust what government officials tell them. If you can begin to take on the identity of independent Commissioners rather than government officials involved in government as usual, I think you'll have a better chance of convincing the public to do what you want them to do. If you don't feel like statespeople right now, if you don't feel it, wait a little bit, hang on. The studies show that a high percentage of you will become statespeople and will rise above the direct constituent kinds of things. Not all of you, but most of you. So, try to wait.

Seek consensus. Build on the combined strength of this body. Maybe you don't need a whole lot of ideas. Maybe you only need a couple of good ideas that everybody can get behind. If you combine the clout in this room, together with that of your appointing authorities, I'll bet you could do anything you think the state needs. But if you, instead, spread yourselves out, if you are beguiled by the unlimited nature of your mandate, you may end up accomplishing nothing.

I would like to make a couple of more technical points. There is general agreement that the State Constitution should be limited to fundamentals and not legislative detail. Of course, your fundamentals might be my legislative detail and vice versa. When I was representing clients in front of the Commission in 1978, most of my fundamental ideas were rejected as legislative detail. So this is not an easy dichotomy, but it's one that most people agree on. Most people that speak to constitutional conventions and commissions say, "Stick to fundamentals; keep it short." I don't think that's exactly the right way to go. Use some words if you need them. Brevity isn't any sort of special virtue, it seems to me. Of course you don't want to load up the constitution with rigid ***229** detail. Putting something in the state constitution elevates it to the highest legal position in the state. It also puts the matter beyond change by ordinary legal processes. It is good sometimes, and it's bad sometimes, to take something out of the normal processes of legal change.

Studies have shown that the good things are usually anticipated. But bad things are usually unanticipated. There are things you couldn't imagine or you couldn't predict, hard as you thought about it. So the unanticipated negative consequences of putting something in a state constitution really ought to be remembered. [FN21]

You might want to consider some sort of "constitutionalization impact statement" to try to force yourselves to think beyond the pros and cons of the policy that you're discussing, but also, even if it's a good idea, to ask, "Do we need it in the Constitution?" You might conclude that the matter should be constitutionalized. But what are the costs and benefits of doing that?

You need to work on some of the technical questions. Will the provision be self-executing? Will the courts enforce it without implementing legislation? If the court won't, why are you putting it in the constitution? Maybe it just sounds good. Maybe it's a good idea. You need to worry about the problem of negative implication where the expression of one thing could be read as a limit on others. [FN22] People put in the state constitutions the mandate that widows of veterans get a tax exemption. It sounded like a good idea. But when the courts told them that the Legislature couldn't pass a statute giving widowers of veterans a tax exemption, it didn't sound so good. What seemed like a good idea turned into a limit on the Legislature.

Putting things in the state constitution delegates a lot of decisionmaking to the judiciary. You don't always have to do that. We just amended our constitution in New Jersey to include one of the unfunded local government mandate protections. But the people didn't want the court adjudicating the issue. So a commission was created. The decisions of the commission are nonjusticiable; they're not reviewable by the courts. [FN23] But by and large when you put something in the state constitution you delegate a decision about it to the courts. Some people would say, "What's wrong with that?" But others might say, "Well, I don't know if I want to do that." You need to think about it ahead

of time.

***230** What about sunset provisions? Sunset provisions could be used in state constitutions. Do you think you have good idea? Well, let's try it for a generation. Let the next generation muster a majority to keep it. That's a possibility.

The Sunshine Amendment adopted here in Florida showed us another mechanism. Part of that went into effect, but it could be changed by statute. How could you do that? Because it says so in the amendment. [FN24] That's an interesting mechanism, it seems to me.

In any event, the real question is whether the loss of flexibility is worth it. Try to develop ideas for assessing these impacts as you debate.

What will the State of Florida be like in the next generation? I've heard some current debate about changing the public housing laws around the country. There's an idea to go to more mixed-income housing and some privatization. Almost all of that debate concludes that state constitutions won't let us do it. The state constitutions were amended 100 years ago to say that the states can't lend to private corporations and to include other similar limitations.

So you need to think ahead. Do we have things in the state constitution that will limit what we ought to be doing for citizens? Consider techniques for presenting the recommendations to the public. We saw in 1978 that the separation of questions on the ballot didn't necessarily protect the uncontroversial provisions. People just voted against all of them. Maybe all of them were controversial. I don't think they all were. If you can manage your unlimited mandate carefully and wisely, pull together, and give yourself time to develop an independent identity, you really will function as a constitutional convention. I think you'll be successful.

Most people who give these kinds of speeches say you've got to try to provide for the next 100 years. In Florida, you don't have to do that. If you can get us to the next generation, there'll be another commission. And, remember, I want to be on it. For better or for worse, you don't really have to try to make a constitution for the next 100 years. But I think if you do a good job, people will remember you for 100 years.

I'm going to leave you with the words New Jersey Governor Alfred Driscoll used to open that state's 1947 Constitutional Convention. He said:

The rights you exercise in this Convention were won in 1776 and protected in memorable struggles through the years. . . . May you be blessed with clearness of vision, soundness of purpose, and successful accomplishment, to ***231** the end that citizens of this State a hundred years hence will repeat your names with pride and call you devout, wise and just. Yours, ladies and gentlemen, is the opportunity of a century. [FN25]

Two of you have had more than one opportunity to serve in this body, but most of you won't get that chance. This is your shot. Most people who participate in state constitution-making say it's the most meaningful piece of public service in their career. I hope you'll be able to leave an enduring legacy. I think you're privileged. I wish you the best of luck, and I'll see you in 2017. Thank you very much.

[FNa1]. This address originally was given to the 1997-1998 Florida Constitution Revision Commission during its organizational session on June 17, 1997 in Tallahassee, Florida. To retain the speech's original character, it has been edited only sparingly. Footnotes have been added where material is directly quoted and where further reading might prove interesting.

[FNa2]. Distinguished Professor of Law, Rutgers University School of Law, Camden, N.J. B.A., 1967, Florida State University; J.D., 1969, University of Florida College of Law; LL.M., 1971, New York University School of Law; LL.M., 1980, Columbia University School of Law. The author served as a legislative aide during the drafting of the Florida Constitution of 1968 and represented clients before the 1978 Florida Constitution Revision Commission. He teaches State Constitutional Law at Rutgers, and is the author of State Constitutional Law: Cases and Materials (2d Ed. 1993), and The New Jersey State Constitution: A Reference Guide (updated 1997).

[FN1]. See **Robert F. Williams**, A Generation of Change in Florida State Constitutional Law, 5 St. Thomas L. Rev.

133, 136 (1992) (reviewing Talbot D'Alemberte, The Florida State Constitution: A Reference Guide (1991)).

[FN2]. Cf. Fla. Const. art. XI, § 2 (providing the procedure for the appointment of members to the 1997-1998 Constitution Revision Commission).

[FN3]. New York voters rejected the opportunity to call a convention in November 1997. Richard Perez-Pena, Voters Refuse to Take Chances on Bond Act and Convention, N.Y. Times, Nov. 6, 1997, at B5.

[FN4]. See generally **Robert F. Williams**, The State Constitutions of the Founding Decade: Pennsylvania's Radical 1776 Constitution and It's Influences on American Constitutionalism, 62 Temple L. Rev. 541 (1989).

[FN5]. See generally **Robert F. Williams**, Comparatiave State Constitutional Law: A Research Agenda on Subnational Constitutions in Federal Systems, in Law in Motion: Recent Developments in Civil Procedure, Constitutional, Contract, Criminal, Environmental, Family & Succession, Intellectual Property, Medical, Social Security, Transport Law 339 (Roger Blanpain ed., 1997).

[FN6]. See, e.g., New State Ice Co. v. Liebmann, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting).

[FN7]. A Serious Address to the People of Pennsylvania on the Present Situation of Their Affairs, in Pennsylvania Packet (Dec. 1, 1778), reprinted in 2 P. Foner, The Complete Writings of Thomas Paine 277, 281 (1969); see also Williams, supra note 4, at 543.

[FN8]. See **Robert F. Williams**, "Experience Must Be Our Only Guide": The State Constitutional Experience of the Framers of the Federal Constitution, 15 Hastings Const. L.Q. 403, 424 (1988) (citing The Federalist No. 1, at 6 (Alexander Hamilton) (Modern Library ed., 1937)).

[FN9]. Letter from Thomas Jefferson to Samuel Kercheval (July 12, 1816), quoted in Albert L. Sturm, The Development of American State Constitution, 12 Publius 57, 72-73 (1982); see also Williams, supra note 1, at 138.

[FN10]. 1 James Bryce, The American Commonwealth 27 (2d rev. ed., 1891); see also Williams, supra note 8, at 410.

[FN11]. James Dealey, Growth of American State Constitutions 11 (1915); see also Williams, supra note 8, at 403.

[FN12]. See generally **Robert F. Williams**, Introduction: The Stories of State Constitutional Law, 18 Nova L. Rev. 715 (1994).

[FN13]. See generally Talbot D'Alemberte, The Florida State Constitution: A Reference Guide 15 (1991); Steven J. Uhlfelder & Robert A. McNeely, The 1978 Constitution Revision Commission: Florida's Blueprint for Change, 18 Nova L. Rev. 1489 (1994).

[FN14]. See generally, e.g., James A. Gardner, The Failed Discourse of State Constitutionalism, 90 Mich. L. Rev. 761 (1992). For responses, see Roundtable, Responses to James A. Gardner, The Failed Discourse of State Constitutionalism, 24 Rutgers L.J. 927 (1993).

[FN15]. See generally Harry L. Witte, Rights, Revolution, and the Paradox of Constitutionalism: The Processes of Constitutional Change in Pennsylvania, 3 Widener J. Pub. L. 383 (1993).

[FN16]. Thomas Gais & Gerald Benjamin, Public Discontent and the Decline of Deliberation: A Dilemma in State Constitutional Relform, 68 Temple L. Rev. 1291, 1291 (1995).

[FN17]. See id.

[FN18]. Id. at 1299.

[FN19]. See id. at 1313 & n.82 (citing James S. Fishkin, Democracy and Deliberation: New Directions for Democratic Reform 1, 84 (1991)).

[FN20]. Elmer E. Cornwell, Jr. et al., State Constitutional Conventions: The Politics of the Revision Process in Seven States 205-06 (1975).

[FN21]. Frank P. Grad, The State Constitution: Its Function and Form for Our Time, 54 Va. L. Rev. 928, 958-72 (1968) (discussing factors that weigh against constitutional inclusion).

[FN22]. See id. at 966-68.

[FN23]. See N.J. Const. art. VIII, § 2, 5.

[FN24]. See Fla. Const. art. II, § 8(h); D'Alemberte, supra note 13, at 40.

[FN25]. 1 Proceedings of the New Jersey Constitutional Convention 9 (1947).

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*393 DOES DIRECT DEMOCRACY THREATEN CONSTITUTIONAL GOVERNANCE IN FLORIDA?

Joseph W. Little [FNa]

In a recent advisory opinion pertaining to the legal sufficiency for ballot placement of a citizen's initiative to amend the Florida Constitution, Justice Grimes remarked, "I personally believe that constitutional amendment by initiative is being overused." [FN1] Although one may look askance at such a patently political evaluation in judicial discourse of a purely legal question, especially in a state in which "all political power is inherent in the people" [FN2] and in which the people have explicitly reserved the constitutional prerogative "to propose the revision or amendment of any portion or portions of this constitution by initiative," [FN3] Justice Grimes' lamentation should nevertheless prompt us to examine the causes of his concerns.

No Florida Constitution prior to the revised version adopted in 1968 contained a provision permitting amendment by a popular initiative. [FN4] Consequently, the 1968 Florida Constitution broke new ground in prescribing a limited method of proposing constitutional amendments by initiative. Specifically, the 1968 revised constitution reserved to the people the "power to propose amendments to any section of this constitution." [FN5] Applying this formulation, the ***394** Florida Supreme Court invalidated a 1970 initiative that would have amended article III to substitute a unicameral legislative body (i.e., the Senate) in the place of the orthodox two house body. [FN6] The court relied primarily on its assessment that the initiated proposal was not an amendment, but was instead a revision of the constitution masquerading as an amendment. [FN7] According to the court, the people had reserved the power only to amend and not to revise by initiative. [FN8] Secondarily, the court found fault with the proposed amendment because it expressly anticipated the legislature's need to propose additional amendments to conform the remainder of the constitution to the unicameral legislature; thus, the proposed amendment was not complete within itself. [FN9]

Thus, in its first decision pertaining to people's initiatives, the supreme court sent out a strong signal that it would interpose itself between initiative petitioners and the ballot to assure that the people never get the chance to approve misguided amendments. Defenders of the court would argue that it merely applies legal tests imposed by the constitution [FN10] and laws [FN11] and does not concern itself with the substance or merits of the proposals. This defense will not ring true to those initiative sponsors who have seen demanding petition drives [FN12] rendered futile by judicial decisions that apply erratically shifting judicial standards to bar their proposals. On occasion, the supreme court itself has openly acknowledged that the standard it imposed to defeat an initiative drive was a retreat from earlier standards upon which the current petitioners had relied. [FN13]

Despite this, the shifting judicial standards phenomenon is only a side issue. If the court had been more successful in prescribing ***395** a comprehensive set of relatively immutable criteria, it may have bounced fewer initiatives from the ballot.

Without the pall of uncertainty created by ill-defined and shifting legal standards, even more initiatives might have been attempted. In short, the lack of stable legal standards seems more likely to have diminished, rather than enlarged, the number of petitions.

At any rate, in the wake of that first initiative decision, the 1972 legislature adopted a joint resolution to propose an amendment to the constitution to enlarge the scope of the people's amending power by initiative. [FN14] This amendment, approved by the people in 1972, introduced the "one subject and matter directly connected therewith" content test, which has thereafter remained the constitutional standard for people's initiatives. [FN15] Although the supreme court has explicitly acknowledged that in approving the amendment the people intended to "enlarge the right to amend the Constitution by initiative petition," [FN16] it has also construed the constitutional "single-subject" standard to be a substantive buffer against ballot access by what the court deems to be proposals of "precipitous change." [FN17] Hence, the 1972 amendment enlarged access, but not without a hurdle.

In addition, deficiencies in numerous procedural niceties lurk as a separate barrier. The potential of having an initiative come to a vote creates the need to place descriptive words on the ballot to inform the voters about the issue. Even before amendment by initiative was introduced in 1968, the legislature had prescribed criteria as to what should appear on the ballot in regard to legislatively proposed constitutional amendments. [FN18] The first statute required ***396** only that the substance of the amendment be printed on the ballot with a place provided for the voter to mark either "for the amendment" or "against the amendment." [FN19] This worked satisfactorily so long as the legislature held the only key to proposing constitutional amendments.

After the 1968 constitution introduced four separate means of proposing constitutional changes, [FN20] including the original initiative process, the legislature amended the statute to require sponsors to embody ballot language of the substance of each amendment as an integral part of the proposal. Initially, the legislature imposed this requirement only upon itself, the Constitution Revision Commission, and constitutional conventions. [FN21] In 1979, the legislature extended it to people's initiatives by requiring that the sponsor prepare the ballot language and the secretary of state approve it. [FN22] This requirement provided a statutory basis for judicial review of whether or not the ballot statement of a people's initiative fairly embodied the substance of the amendment.

In 1980, the legislature expanded these standards to require that an initiative's sponsors prepare a ballot summary, stating the initiative's substance and chief purpose in "clear and unambiguous language." [FN23] The sponsors are also required to prepare a ballot title of not more than fifteen words to "consist of a caption . . . by which the measure is commonly referred to or spoken of." [FN24] These more detailed statutory criteria create additional risks for petition sponsors. The more plentiful and exact the requirements, the more numerous the opportunities for mistake.

Initially, challenges of either the single-subject substance of an initiative or the sufficiency of the ballot statement ordinarily were made by petitioning a court to issue a writ of mandamus to the ***397** secretary of state. The petition sought orders to the secretary to strike initiatives from the ballot after they had been assigned ballot position. In 1984, opponents successfully employed this approach in Fine v. Firestone to have an aggressive, government revenue limiting proposal struck from the ballot. [FN25] Fine eliminated a threatening amendment, but it also stimulated further reform. Sponsors of an initiative proposal may consume thousands of hours and perhaps hundreds of thousands of dollars to obtain the signatures required to qualify an initiative for a ballot position. They are understandably anguished and angered when their initiatives are yanked off the ballot at the back end of an extended process.

Hence, in the aftermath of Fine, the legislature proposed an amendment to provide a constitutional framework for review nearer to the beginning of the process. This amendment, adopted in 1986, authorizes the attorney general to petition the justices of the supreme court for an advisory opinion as to "the validity of any initiative petition" under conditions prescribed by general law. [FN26] To execute the provision, the legislature enacted a statute directing the secretary of state to submit an initiative petition to the attorney general after the sponsors have obtained ten percent of the number of verified petitions needed to obtain ballot position. [FN27] The statute also directs the attorney general to request an advisory opinion from the justices as to the compliance of the initiative with the constitutional single subject standard and the statutory ballot title and summary standards. [FN28] The direct purpose is to make an early test of the technical compliance of an initiative's substance and ballot language. Presumably, the overarching purpose is to open the initiative process for greater use by reducing the risk of costly and irretrievable mistakes.

To what extent has the Florida initiative power posed a threat to the stability of the Florida Constitution at any time since it was first reserved to the people in the 1968 constitution? In examining this issue, the reader must distinguish between people's initiatives that are burdened with laborious and costly petition gathering ***398** requirements [FN29] and proposals submitted by a joint resolution of the legislature. [FN30] Legislatively sponsored proposals require no petitions and are not lumbered with the single-subject requirement. Indeed, they may embrace an "(a)mendment of a section or revision of one or more articles, or the whole." [FN31]

The supreme court has explained that the constitution gives legislative proposals greater latitude in content than it gives people's initiatives because legislative proposals are publicly and deliberately formulated in the legislative process. The need for a single-subject limitation to avoid poorly considered, precipitous changes in the constitution is therefore lessened. [FN32] Although the theory appears sound, the practice of the legislature refutes it. An examination of the amendments proposed by the legislature reveals that many simply constitutionalize points of law that could have been enacted by statute. That is, the legislature tends to use its power to propose constitutional amendments as a means to move contentious, legislative proposals to a vote of the people in the guise of amending the constitution. I have severely criticized the practice of introducing non-constitutional content into the constitution [FN33] and still see the practice as an abuse of the amending process. [FN34]

***399** Similarly, the impetus of several people's initiatives has been their sponsors' frustrations arising from perceived failures of the legislature to address certain issues through legislation. As a means to an end, disappointed citizens turn to the initiative process to circumvent the legislature. [FN35] Recent initiatives exemplifying this behavior include proposals to prohibit the use of certain kinds of fishing nets, [FN36] to provide a financing source for restoring the Everglades, [FN37] to require convicted felons to serve most of their prison sentences, [FN38] and to provide a secure source of funding for criminal justice measures. [FN39]

In the sixteen years that elapsed between the introduction of people's initiatives in 1968 and the Fine v. Firestone [FN40] decision in 1984, only four people's initiatives were reviewed by the supreme court. Two of these were of genuine constitutional substance: the first proposed a unicameral legislature, [FN41] and the second, which led to Fine, proposed an elaborate scheme to inhibit the power of governments to raise revenues by imposing new taxes and fees. [FN42] The supreme court struck both these measures, the first because it sought to amend more than one section of the constitution, thus ***400** taking it beyond the purview of the initiative power as originally reserved. [FN43] The supreme court struck down the second because it violated the single-subject limitation of the enlarged initiative power. [FN44] The other two initiatives were of marginal constitutional stature. One was the so-called "Sunshine Amendment" which constitutionalized ethical and financial disclosure standards for certain elected officials. [FN45] The second was a proposal to legalize casino gambling. [FN46]

The Sunshine Amendment was of marginal constitutional stature because the legislature possessed ample authority to impose the measures by law. [FN47] The constitutional effect of the adoption was to deprive the legislature of the power not to impose the measures. The same argument applies to casinos. Although the Florida Constitution prohibits lotteries (i.e., deprives the legislature of the authority to legalize them), [FN48] it does not prohibit all forms of gambling. Consequently, the legislature possesses the power to legalize some forms of casino gambling. [FN49] Hence, the true effect of the casino amendment was merely to repeal statutes outlawing gambling. Of these two, the voters adopted the "Ethics in Government" measure [FN50] and rejected casinos.

***401** In 1984, the Florida Supreme Court also struck an initiative from the ballot that, among other things, sought to place a cap on noneconomic damages recoverable in tort actions. [FN51] According to the court, this measure not only embraced multiple subjects, but also suffered from a misleading ballot title. [FN52] In total, through the end of 1984, the supreme court had jettisoned three of the first five people's initiatives; the voters had rejected a fourth.

In 1986, two more people's initiatives survived court challenges to remain on the ballot. [FN53] Both pertained to gambling. The voters approved a measure to authorize state-operated lotteries, [FN54] but again rejected casinos. Also in 1986, the people adopted the legislatively sponsored amendment, referred to previously, to provide for early advisory review of initiatives by the justices of the supreme court. [FN55]

Of the first group of four initiatives subjected to advisory review through the 1992 election, all survived to be voted upon. The voters approved three: one making English the official language of Florida, [FN56] a second restricting incumbents of certain elective offices to no more than two consecutive terms, [FN57] and the third placing a three percent per year limit on

the amount the tax valuation of homestead property may be increased. [FN58] Although perhaps important as a nationalistic statement, the official language measure is of doubtful constitutional stature. By contrast, the term limits and homestead valuation measures place firm limits on legislative power and, consequently, are of undeniable constitutional stature. ***402** Term limits are also of constitutional character because of Florida's rule that the legislature cannot add qualifications for offices created by the constitution. [FN59] The fourth initiative was a second attempt to place a cap on the recovery of noneconomic damages in tort actions. Although it survived the justices' advisory review, [FN60] the voters rejected it.

After 1992, the supreme court's workload with regard to people's initiatives increased. In 1993, the justices reviewed only one initiative -- a measure to restrict the use of certain kinds of fish nets in Florida waters -- and approved it. [FN61] In the following year, however, a spate of nine measures confronted the justices for advisory opinions: [FN62] one restricting the power of government to enact anti-discrimination laws, [FN63] one imposing a tax to restore the Everglades, [FN64] one requiring all felons to serve at least eighty-five percent of their prison sentences, [FN65] another denominating a particular tax to fund "criminal justice" [FN66] yet another to permit casinos, [FN67] one to relax the single-subject limitation on the content of initiatives, [FN68] one to require voter approval of all new taxes in the ***403** state, [FN69] one to require government compensation for harm done to vested property rights by regulations, [FN70] and the last to require that any constitutional amendment adding a new tax be approved by not less than two-thirds of the electors voting in the election. [FN71] Of these, the justices approved three -- the criminal justice funding, limited casinos, and revenue limits initiatives -- and rejected the remainder. Of the three that reached the ballot, two were adopted by the voters and the third rejected. [FN72]

Among the nine proposals reviewed in advisory opinions, only four were of genuine constitutional stature in that they placed an important limit on governmental, especially legislative, power. These were the proposals to limit the power to enact anti- discrimination laws, [FN73] to enlarge the initiative power [FN74] (and this only because the limit is in the constitution), to prohibit new taxes absent voter approval, [FN75] and to limit the power of government to enforce regulations that damage vested property interests. [FN76] The measure to require a supermajority vote of the electorate to add a tax through the constitution is not of constitutional stature because imposing a specific tax is not a proper function of the constitution. [FN77] Furthermore, the measures to stop early release of prisoners, to fund the criminal justice system, and to impose a tax to restore the Everglades were all within the power of the legislature to enact. They should not be imposed by the constitution. Consequently, much of the "overuse" lamentation stems from the failure of the justices and the supreme court to articulate appropriate standards ***404** as to what is a fit subject -- "single" or otherwise -- for inclusion in the constitution. Also, neither the constitution nor the laws provide a relief mechanism to permit popular adoption of statutes that the legislature does not see fit to enact.

In sum, from 1968 through 1994, only twenty-one separate people's initiatives were subjected to judicial review to test their compliance with content and ballot-language standards. [FN78] Of these, twelve were held to be in compliance with statutory requirements, [FN79] and seven were adopted by the people. [FN80] As noted, nine of these measures were presented for review in 1994, including a package of four tax limitation initiatives submitted by a single sponsor. [FN81]

Contrasted to proposals submitted from other sources, the people's initiative production has been paltry. The 1978 Constitution Revision Commission [FN82] proposed eight amendments or revisions to be voted upon in a single election. All were rejected by the voters. The 1990 Taxation and Budget Reform Commission had more success. It proposed four amendments for the 1992 election. The supreme court removed one from the ballot because of invalid ballot language; [FN83] of the remaining three amendments, the voters approved two, neither of which is of constitutional stature. [FN84]

***405** Even the efforts of these commissions are diminutive by contrast to those of the legislature. Between 1968 and the end of 1994, the legislature proposed seventy-six amendments by joint resolution, [FN85] only three of which were subjected to judicial challenges. The supreme court struck one from the ballot. [FN86] Of the two that survived judicial review, the people approved one. [FN87] Nevertheless, seventy-three proposals went directly to the ballot with no judicial review, and the voters approved fifty-nine of them.

The following table summarizes the proposals to amend the constitution, commencing with the adoption of the 1968 Florida ***406** Constitution and ending with the 1994 election.

Proposals to Amend Florida Constitution: 1968 to 1994

Amendment	Number	Number	Number	Number	Number	Number

Method	Proposed	Adopted by Voters	Rejected by Voters	Challenged in Court	Denied Ballot Access by Judicial Decision	Voted on in 1994
Joint Resolution of Legislature	76	60	15	3	1	2
Constitution Revision Commission	8	0	8	0	0	
Taxation and Budget Reform Commission	4	2	1	1	1	
People's Initiative [FNa]	21 [FNaa]	7	4	21	9	4
Totals	109	69	28	25	11	5

FNa. A proposal included initiatives that were subjects of appellate litigation or that were voted upon.

FNaa. Criminal justice funding has not yet gained ballot position.

What is to be gleaned from this history? To evaluate complaints about overuse of the amending process, the critic must pinpoint the likely harm from overuse, should it occur. To that end, I have identified three potential kinds of harm: overworking the courts, overworking the voters, and misusing the constitution.

A. Overworking the Courts

In the quarter century covered by this study, only twenty-five amendments have been subjected to pre-vote judicial scrutiny. [FN88] That hardly constitutes an overworking of the judiciary, especially when the fundamental importance of these issues

is kept in mind. ***407** Of course, twenty-one of the judicial proceedings have involved people's initiatives, and nine of those were reviewed within 1994. The super-abundance of people's initiatives among those reviewed, especially since 1986, is attributable to the fact that the constitution and laws virtually mandate that the supreme court render an advisory opinion as to each of them. In fact, no people's initiative, including those proposed prior to the adoption of the advisory review process, has ever been voted upon without prior judicial review. Moreover, the advisory review is purely one of law and imposes no burden of reviewing compendious trial records. Much of the judiciary's grief in this regard is self-imposed by virtue of the failure to prescribe a stable set of criteria as to what is valid substance for an amendment to the constitution.

The most fundamental point is this: undertaking to amend the constitution by initiative is an elemental exercise of the inherent sovereignty of the people. If this exercise creates an inconvenience or even a burden for the courts, the courts are bound to suffer it. If the burden becomes too great to bear, the people themselves can prescribe remedies. Historical practices do not remotely approach the need for change on that account.

B. Overloading the Voters

Overloading the voters is a genuine concern. In my estimation, the voters should not be asked to vote on more than three or four amendments in any one election. The "upper limit" of four has been exceeded eleven times [FN89] since the 1968 constitution was adopted, and most of this overload is attributable to the legislature. In 1978, the Constitution Revision Commission's proposals caused the overload, and in 1994, two amendments proposed by joint resolution were added to three proposed by people's initiatives. [FN90] In short, the legislature was responsible for the overload in nine of the eleven years.

In an earlier article, I proposed the following measures to reduce the number of legislatively sponsored proposals:

1. The two houses of the legislature must sit together to ***408** adopt a joint resolution to propose a constitutional amendment.

2. The joint resolution must be approved by not less than three-fifths of the membership of each house in two successive regular sessions with an intervening election of the House of Representatives.

3. The legislature may place no more than three proposals on the ballot for any election. [FN91]

If this proposal were adopted, the need for further correction might dissipate. Although the Constitution Revision Commission and the Taxation and Budget Reform Commission should be modest in the volume of their productions, the infrequency of their convenings dilutes the overload they cause. [FN92] Nevertheless, a modest change in the timing of the voting may be worthy of consideration. For example, the constitution might profitably be amended to require that the commissions' proposals be scheduled over successive general elections, with no more than three proposals on the ballot per election.

Unless, and until, historical practice establishes that the people will continue to produce initiatives for ballot position at a sustained high rate (more than three per election), then no limit on people's initiatives should be considered. If such a high rate is sustained, then the people might be offered an opportunity to constrain the production to three per election with latecomers placed first in line for the next election.

C. Misusing the Constitution

The greatest danger of the outpouring of proposals to amend the Florida Constitution is from their content. As previously discussed, many of the proposals threaten to lard the constitution with non-constitutional substance.

Consistent with the basic theory of state constitutional law, the Florida Constitution is a document with two primary purposes. The first purpose, and by far the greater, is to impose limitations upon the power of government to protect the people from political and governmental oppression. [FN93] As expressed by the Florida Supreme ***409** Court, "(t)he Constitution of Florida is a document of limitation by which the people of the state have restricted the forces of government in the exercise of dominion and power over their property, their rights and their lives." [FN94] It is this aspect of American (and Floridian) constitutionalism that historically sets governance in the United States of America apart from all governments that preceded it. Indeed, much of the extra-American political history of the nineteenth and twentieth centuries has involved attempts to import and implement the American experience into other lands.

The second purpose of our Florida Constitution is to define the structure of government and allocate functions and powers among the various branches. [FN95] Indeed, because a primary purpose of this specification of branches of government, and separation of their powers, is to deny to any department or government official plenary governmental power over the people, this second aspect may properly be seen as a subsidiary of the first -- one of the vital, constitutional hedges on governmental power. [FN96]

In sum, the Florida Constitution is a defining and power-***410** limitingdocument. It is not a mere statute with the purpose of regulating some aspect of private behavior, and it is not an instrument for implementing some desired public works program. [FN97] Under our form of government, these instrumental functions are to be accomplished through the agencies of representative government as the constitution created, defined, and limited them.

Accordingly, the constitution is not a vehicle for making positive law, but it is an instrument to limit and control what laws the government shall have the authority to make and what powers the government shall be permitted to exercise. This being true, to burden the constitution with provisions that are merely legislative in character (i.e., to impose a particular tax, to authorize a particular form of gambling, or to prohibit a particular kind of fishing) is a misuse of the document and of the principle of American state constitutionalism.

The legislature has abused the constitution in this regard. [FN98] Similar abuse came from the first Taxation and Budget Reform Commission proposals [FN99] and a substantial number of the people's initiatives. The cure to these inappropriate practices is easily stated: No amendment to the constitution may be placed upon the ballot to accomplish a purpose that is within the power of the Florida Legislature to accomplish by law.

This rule would secure the constitution its rightful status as the basic defining and power-limiting instrument under which state government functions. Under this rule, every amendment to the constitution would either change the definition of the constitutional structure of government or change the limits on governmental power. Every amendment proposed, whether by the legislature, a commission, or people's initiative, should be tested against this standard before being permitted on the ballot.

Some may criticize this proposal as depriving the people of an established means of "going over the head of the legislature" in order to constitutionalize laws or programs that the legislature declines to enact. Similarly, defenders of the legislature may complain that the measure would deprive the legislature of the power ***411** to let the people decide whether to adopt laws or programs upon which the population is deeply divided.

The second of these concerns is of lesser consequence than the first, and it has a ready solution. The constitution now permits the legislature to prescribe for referenda by law. [FN100] The legislature also has the power to condition the effectiveness of any law it enacts upon some stated contingency, including the approval of the law by a vote of the electors. [FN101] Although the legislature should be discouraged from using this power willy-nilly, it should be encouraged to use the power as an alternative to proposing a constitutional amendment in order to test public acceptance of a non-constitutional measure.

One weakness of submitting statutes to popular approval in a referendum is that the legislature possesses the power to repeal those statutes the voters ultimately adopt whenever it chooses to do so. Although the politics of the matter suggest that the legislature would use its power to repeal or amend voter-approved statutes sparingly, the power could be positively limited by placing a restriction in the constitution. For example, these constitutional limits might be suitable: No general law approved by the electorate of the state may be repealed or amended, except by law approved by the state electorate or by an act of the legislature that is (1) approved by four-fifths of the membership of each house of the legislature, if enacted within five years of the effective date of the act to be repealed or amended; or (2) approved by two-thirds of the membership of each house of the legislature, if enacted within ten but not five years of the effective date of the act to be repealed or amended; or (3) approved by a majority of the membership of each house of the legislature, if enacted more than ten years after the effective date of the act to be repealed or amended. This model gives substantial sanctity to general laws approved by the people without falsely and unnecessarily enshrining them in constitutional garb. The model also permits the people themselves (or if the urgency is deemed to be great enough, the legislature) to amend or repeal general laws approved by the electorate.

This proposal needs but slight modification to provide a model for the initiation of statutes by the people. The proposal

would provide the people with recourse against the legislature when it ***412** declines to enact desired legislation. To effectuate this proposal would itself require a constitutional amendment, as the existing constitution vests "the legislative power" of the state in the legislature only. [FN102] There is no latitude for lawmaking by initiative. Consequently, to claim the power to initiate statutes without any assistance from the legislature, the people must amend the constitution appropriately. The amendment should include these elements: (1) a modification of the legislative article to permit the people to initiate statutory enactments upon obtaining a prescribed number of petitions signed by qualified electors (the number required should be substantially less than that required for initiating a constitutional amendment); [FN103] (2) a requirement that initiated statutes conform to the same ballot title and single-subject restrictions that apply to enactments by the legislature; (3) a provision that initiatives may repeal general laws enacted by the legislature, except for general appropriations statutes; and (4) a limitation against subsequent repeal by the legislature, such as is proposed above.

The specter of popular lawmaking will alarm some people. After all, the artful packaging of initiatives and clever advertising can fool the people into voting for bad laws. But this is nothing new. Well-financed special interests already exert extraordinary power in deciding what laws are made in Tallahassee. Taking certain statutes directly to the people may dilute the power of the "big" interests. If popular initiation of statutes should prove not to work, as determined by the people themselves, the people continue to possess the power to expunge the provision from the constitution.

CONCLUSION

"It is hard to amend the Constitution and it ought to be hard." [FN104] This maxim, attributed by Justice Roberts to the "late and revered Justice Terrell," [FN105] was most recently endorsed by ***413** Justice Shaw. [FN106] Justice Roberts also espoused the view that the people intended amendment by initiative to be the hardest path for an amendment to take. [FN107] In 1993, Justice McDonald "heartily" concurred that the initiative was intended to be the "most difficult method of amending the constitution." [FN108]

With all of this, in principle, I strongly agree. But as to any implication that the initiative process has been overused, I strongly disagree. It ought to be hard to amend the constitution by initiative and it is. Since the initiative was introduced in Florida in 1968, only five amendments have been added by that method, including one added in 1994. [FN109] This production over twenty-six years hardly establishes that the initiative process is too easy or overused.

By contrast, historic practices since 1968 show patterns of abuse in the legislature's proclivity to proffer amendments by joint resolution, which is restrained by no prudential limitation. In fact, when Justice Roberts warned about amendment by initiative in 1976, he mistakenly referred to evidence of the abusive practice of the legislature to make his point:

> Significantly, the Constitution of the United States in 200 years has been amended only 26 times, whereas, the Constitution of Florida, carefully prepared following a two-year study and which became effective as recent as 1969, has already been amended 14 times with nine proposed amendments on the ballot in November, 1976. If all of these should be adopted, the recent 1968 Constitution of Florida would have been amended 23 times in seven years . . . . [FN110]

Of the fourteen amendments referred to by Justice Roberts, all had been proposed by the legislature, and none by initiative. [FN111] Only one of the nine proposals on the 1976 ballot was proposed by initiative, whereas eight were proposed by the Constitution Revision Commission. [FN112] Furthermore, the evil of misuse has continued to be primarily a shortcoming of the legislature.

Justice Roberts was correct to criticize the subject matter of the particular amendment then under his scrutiny -- "Ethics in Government" -- as being of non-constitutional content. Non- constitutional content has proved to be a recurring characteristic of proposed amendments whether initiated by the people, the legislature, or one of the commissions. [FN113] Justice McDonald recently focused upon this form of abuse to warn that "the permanency and supremacy of state constitutional jurisprudence is jeopardized by the recent proliferation of constitutional amendments." [FN114] Justice McDonald homed in on the problem and hinted at possible solutions:

> The legal principles in the state constitution inherently command a higher status than any other legal rules in our society. By transcending time and changing political mores, the constitution is a document that provides stability in the law and society's consensus on general, fundamental values. Statutory law, on the other hand, provides a set of legal rules that are specific, easily amended, and adaptable to the political, economic, and social changes of our society.
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> . . . .
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> Undoubtedly, some of Florida's most crucial legal principles have evolved as a result of the initiative process. However, the legislative power of the state is vested in the Legislature, . . . and on matters that are statutory in nature, a concerted effort

should be made to have the Legislature address the subject. The technical requirements, such as the single-subject rule . . . appear insufficient to prevent abuse of the amendment process. At this juncture, rather than espouse any particular solution as to how to prevent such abuse, I merely express my thought that some issues are better suited as legislatively enacted statutes than as constitutional amendments. [FN115]

***415** I offer concrete proposals to implement Justice McDonald's goals. The proposal to provide for the initiation of statutes is important. More important still is the adoption of a rule of constitutional content, stated previously, [FN116] to be applied to every proposed amendment, whatever the method. Apart from the content restriction and possible limits on the number of measures permitted on a single ballot, no further restrictions need be placed upon the people's power to propose amendments to the constitution.

[FNa]. Professor of Law, University of Florida College of Law; B.S., Duke University, 1957; M.S., Worcester Polytechnical Institute, 1961; J.D., University of Michigan, 1963.

[FN1]. Advisory Op. to Att'y Gen. re: Stop Early Release of Prisoners, 642 So. 2d 724, 728 (Fla. 1994) (Grimes, J., dissenting).

[FN2]. Fla. Const. art. I, S 1.

[FN3]. Id. art. XI, S 3.

[FN4]. The first 1838 Florida Constitution indicates that it might be amended either by a convention called by the legislature or by a supermajority vote of two-thirds of each house of the legislature. See Fla. Const. of 1838, art. XIV. Apparently, no popular approval was required. See id. The 1861 Florida Constitution permitted amendments by a convention called by the legislature. Fla. Const. of 1861, art. XIV. Again, no popular vote seemed to have been required. See id. The 1865 constitution continued the amendment approach of the 1861 constitution. See Fla. Const. of 1865, art. XIV. The 1868 constitution permitted the legislature to propose amendments by a two-thirds vote of each house and also by calling a convention. Fla. Const. of 1868, art. XVII. All proposals were to be submitted to the people for a vote. Id. The 1885 Florida Constitution, as amended, prescribed three means for the legislature to propose amendments and also permitted the legislature to call a convention. Fla. Const. of 1885, art. XVII, S 1 (amended 1948); id. art. XVII, S 3 (1942); id. art. XVII, S 4 (1964); id. art. XVII, S 2 (amended 1966). All proposals required an approving vote of the people. Id.

[FN5]. Fla. Const. art. XI, S 3 (amended 1972) (emphasis added).

[FN6]. Adams v. Gunter, 238 So. 2d 824 (Fla. 1970).

[FN7]. Id. at 831.

[FN8]. Id.

[FN9]. Id. at 832.

[FN10]. See Fla. Const. art. XI, S 3. In 1986, the constitution was amended to authorize the attorney general to petition the justices of the Florida Supreme Court for an advisory opinion pertaining to the legal sufficiency of initiatives to amend the constitution. Id. art. IV, S 10 (amended 1986).

[FN11]. See Fla. Stat. S 101.161 (1993).

[FN12]. To obtain ballot position, an initiative must be supported by petitions signed by eight percent of the number of voters who participated "in the last preceding election in which presidential electors were chosen." Fla. Const. art. XI, S 3. The same provision imposes geographic collection requirements. See id.

[FN13]. See, e.g., Fine v. Firestone, 448 So. 2d 984, 988-90 (Fla. 1984). In Fine, the court "receded" from at least three prior standards. Id.

[FN14]. The legislature proposed the following changes:
SECTION 3. Initiative.--The power to propose the revision or amendment of any portion or portions +amendments to any section+ of this constitution by initiative is reserved to the people, provided that, any such revision or amendment shall embrace but one subject and matter directly connected therewith.
H.R.J. Res. 2835, 2d Leg., Reg. Sess., 1972 Fla. Laws 1665.

[FN15]. See Fla. Const. art. XI, S 3 (amended 1994).

[FN16]. Floridians Against Casino Takeover v. Let's Help Florida, 363 So. 2d 337, 340 (Fla. 1978) (quoting Weber v. Smathers, 338 So. 2d 819, 823 (Fla. 1976) (England, J., concurring)).

[FN17]. Advisory Op. to Att'y Gen. re: Save Our Everglades Trust Fund, 636 So. 2d 1336, 1339 (Fla. 1994).

[FN18]. Even apart from statutory prescription, the supreme court has long held that in voting upon proposed amendments, "the voter should not be misled and . . . (should) have an opportunity to know and be on notice as to the proposition on which he is to cast his vote." Hill v. Milander, 72 So. 2d 796, 798 (Fla. 1954).

[FN19]. Fla. Stat. S 101.161 (1971). This was amended in 1973 to require the legislature to include the "exact wording" of the substance of the measure to be "embodied in the enabling legislation." Id. (1973). This means that the sponsor of the proposal, i.e., the legislature, prepares the ballot language, thus setting up the potential for judicial review of its effectiveness and clarity.

[FN20]. Fla. Const. art. XI, S 1 (joint legislative resolution); id. art. XI, S 2 (periodic constitutional revision commission); id. art. XI, S 3 (people's initiative); id. art. XI, S 4 (people's constitutional convention). A fifth means, proposals by the Taxation and Budget Reform Commission, was added in 1988. Id. art. XI, S 6, proposed by H.R.J. Res. 1616, 10th Leg., Reg. Sess., 1988 Fla. Laws 2435.

[FN21]. 1977 Fla. Laws ch. 175, S 13.

[FN22]. 1979 Fla. Laws ch. 365, S 16.

[FN23]. 1980 Fla. Laws ch. 305, S 2 (amending Fla. Stat. S 101.161 (1971)).

[FN24]. Id.

[FN25]. Fine v. Firestone, 448 So. 2d 484 (Fla. 1984).

[FN26]. Fla. Const. art. IV, S 10, proposed by H.R.J. Res. 71, 9th Leg., Reg. Sess., 1986 Fla. Laws 2281. The same measure added S 3(10) to article V of the Florida Constitution, providing the supreme court with jurisdiction to accept the petitions for advisory review.

[FN27]. See Fla. Stat. S 15.21 (originally enacted as 1987 Fla. Laws 363, S 1). This section also contains the other necessary criteria for ballot position. Id.

[FN28]. Fla. Stat. S 16.061 (1993) (originally enacted as 1987 Fla. Laws ch. 363, S 2).

[FN29]. Fla. Const. art. XI, S 3.

[FN30]. Id. art. XI, S 1.

[FN31]. Id.

[FN32]. Fine v. Firestone, 488 So. 2d 984, 989 (Fla. 1984). The court stated:
(W)e find that we should take a broader view of the legislative provision because any proposed law must proceed through legislative debate and public hearing. Such a process allows change in the content of any law before its adoption. This

process is, in itself, a restriction on the drafting of a proposal which is not applicable to the scheme for constitutional revision or amendment by initiative.
Id. Justice Roberts once expatiated on this difference more sharply:
Where an amendment is by Legislative Resolution or Resolution of a Constitutional Convention, there are always public hearings, committee studies, and public debate in developing the format of the proposal, whereas, under the initiative section involved here, it only takes one person, not even required to be a resident of the State, nor learned in the law, to pencil an amendment, giving it a popular name, get the signatures, and place it on the ballot without any such committee action, study or debate.
Weber v. Smathers, 338 So. 2d 819, 824 (Fla. 1976) (Roberts, J., dissenting), overruled in part by Floridians Against Casino Takeover v. Let's Help Florida, 363 So. 2d 337 (Fla. 1978).

[FN33]. See Joseph W. Little & Julius Medenblik, Restricting Legislative Amendments to the Constitution, Fla. B.J., Jan. 1986, at 43.

[FN34]. A similar criticism can be made of the initial proposals of the Taxation and Budget Reform Commission pursuant to article XI, S 6 of the Florida Constitution. The two amendments to the Florida Constitution resulting from that mechanism are not of constitutional substance. See Fla. Const. art. I, S 26; id. art. III, S 19.

[FN35]. In Coleman v. State ex rel. Race, 159 So. 504, 506 (Fla. 1935), the Florida Supreme Court acknowledged that the people might establish "law" by constitutional amendment, but envisioned that constitutional laws would pertain to matters that the legislature was disempowered to enact:
By the adoption of constitutional amendments the people may establish the law which the Legislature is inhibited to enact by other provisions of Constitution. By such procedure . . . the Legislature may be abolished and some other lawmaking power set up in its place. The Legislature is the creature of the Constitution and can never be superior in powers to the will of the people as written by them in the Constitution.
Id. at 507.

[FN36]. Advisory Op. to Att'y Gen. re: Limited Marine Net Fishing, 620 So. 2d 997 (Fla. 1993) (permitting initiative to remain on ballot). Although he concurred, Justice McDonald expressed the view "that the net fishing amendment is more appropriate for inclusion in Florida's statute books than in the state constitution." Id. at 1000 (McDonald, J., concurring).

[FN37]. Advisory Op. to Att'y Gen. re: Save Our Everglades Trust Fund, 636 So. 2d 1336 (Fla. 1994) (excluding proposed amendment from ballot on both single-subject and ballot language grounds).

[FN38]. Advisory Op. to Att'y Gen. re: Stop Early Release of Prisoners, 642 So. 2d 724 (Fla. 1994) (excluding proposed amendment from ballot).

[FN39]. Advisory Op. to Att'y Gen. re: Funding for Criminal Justice, 639 So. 2d 972 (Fla. 1994).

[FN40]. Fine v. Firestone, 448 So. 2d 984 (Fla. 1984).

[FN41]. See Adams v. Gunter, 238 So. 2d 824 (Fla. 1970).

[FN42]. See Fine, 448 So. 2d at 984.

[FN43]. Adams, 238 So. 2d at 831 (applying S 3, article XI of 1971 Florida Constitution). The stricken measure was invalidated before it was placed on the ballot. The secretary of state declined to approve the petition for circulation and the supreme court upheld the action. Id. at 828-30.

[FN44]. Fine, 448 So. 2d at 986 (applying S 3, article XI of 1977 Florida Constitution).

[FN45]. For a discussion of the Sunshine Amendment, see Weber v. Smathers, 338 So. 2d 819, 820-21 (Fla. 1976), overruled in part by Floridians Against Casino Takeover v. Let's Help Florida, 363 So. 2d 337 (Fla. 1978).

[FN46]. See Floridians Against Casino Takeover v. Let's Help Florida, 363 So. 2d 337 (Fla. 1978).

[FN47]. The legislative character of this amendment was apparent at the time the supreme court reviewed it. Justice Roberts said, "We can well take judicial notice that there is already on the statute books of this State, a law recently enacted by the Legislature, after committee study, public hearings, and floor debate, which is as protective of the people as the proposed amendment." Weber, 338 So. 2d at 824 (Roberts, J., dissenting).

[FN48]. Fla. Const. art. X, S 7. But see id. art. X, S 15 (allowing state-operated lotteries).

[FN49]. Lee v. City of Miami, 163 So. 486 (Fla. 1935), examined the history of the lottery prohibition in the Florida Constitution. Like various other provisions in state constitutions, the lottery prohibition was stimulated by abusive governmental practices in the 1800s, particularly disastrous adventures with state lotteries. Given this history, the supreme court concluded that "while the Legislature cannot legalize any gambling device that would in effect amount to a lottery, it has inherent power to regulate or to prohibit any and all other forms of gambling." Id. at 490.

[FN50]. See Fla. Const. art. II, S 8.

[FN51]. 48. See Evans v. Firestone, 457 So. 2d 1351 (Fla. 1984).

[FN52]. Id. at 1354-55.

[FN53]. See Carroll v. Firestone, 497 So. 2d 1204 (Fla. 1986) (seeking to remove existing constitutional prohibition on state-operated lotteries); Watt v. Firestone, 491 So. 2d 592 (Fla. 1st Dist. Ct. App.) (seeking to permit casino gambling), rev. denied, 494 So. 2d 1153 (Fla. 1986).

[FN54]. See Fla. Const. art. X, S 15.

[FN55]. See id. art. V, S 3(10); id. art. IV, S 10, proposed by H.R.J. Res. 71, 9th Leg., Reg. Sess., 1986 Fla. Laws 2281.

[FN56]. Fla. Const. art. II, S 9; see Advisory Op. to Att'y Gen. re: English -- The Official Language of Florida, 520 So. 2d 11 (Fla. 1988).

[FN57]. Fla. Const. art. VI, S 4 (limiting terms of state representatives and senators, Florida's lieutenant governor, state cabinet officers, and United States senators and representatives from Florida); see Advisory Op. to Att'y Gen. re: Limited Political Terms in Certain Elective Offices, 592 So. 2d 225 (Fla. 1991).

[FN58]. Fla. Const. art. VII, S 4(c). This measure survived both an early advisory opinion test, Advisory Op. to Att'y Gen. re: Homestead Valuation Limitation, 581 So. 2d 586 (Fla. 1991), and a later mandamus action seeking to remove it from the ballot, Florida League of Cities v. Smith, 607 So. 2d 397 (Fla. 1992).

[FN59]. See State ex rel. Askew v. Thomas, 293 So. 2d 40 (Fla. 1974). "We have consistently held that statutes imposing additional qualifications for office are unconstitutional where the basic document of the constitution itself has already undertaken to set forth those requirements." Id. at 42.

[FN60]. Advisory Op. to Att'y Gen. re: Limitation on Non-Economic Damages in Civil Actions, 520 So. 2d 284 (Fla. 1988).

[FN61]. Advisory Op. to Att'y Gen. re: Limited Marine Net Fishing, 620 So. 2d 997 (Fla. 1993).

[FN62]. In addition, three other measures were referred to the justices in 1994, but were not given review on the merits. See Florida Locally Approved Gaming, Inc. v. Smith, 642 So. 2d 746 (Fla. 1994) (mandamus denied); Advisory Op. to Att'y Gen. re: Authorization for and Regulation of Statewide System of Limited Access Riverboat Gambling Casinos, No. 84,065 (Fla. dismissed Dec. 15, 1994) (unpublished order on file clerk of Florida Supreme Court); Advisory Op. to Att'y Gen. re: Casino Authorization, Taxation and Regulation, No. 84,064 (pending).

[FN63]. Advisory Op. to Att'y Gen. re: Restricts Laws Related to Discrimination, 632 So. 2d 1018 (Fla. 1994). The court disapproved the proposal on single-subject grounds. Id. at 1021.

[FN64]. Advisory Op. to Att'y Gen. re: Save Our Everglades Trust Fund, 636 So. 2d 1336 (Fla. 1994). The court disapproved the proposal on both single-subject and ballot language grounds. Id. at 1339.

[FN65]. Advisory Op. to Att'y Gen. re: Stop Early Release of Prisoners, 642 So. 2d 724 (Fla. 1994). The court disapproved the proposal based upon the ballot language. Id. at 727.

[FN66]. Advisory Op. to Att'y Gen. re: Funding for Criminal Justice, 639 So. 2d 972 (Fla. 1994). The court approved the proposal. Id. at 974.

[FN67]. Advisory Op. to Att'y Gen. re: Limited Casinos, 644 So. 2d 71 (Fla. 1994). The court approved the proposal. Id. at 75.

[FN68]. League of Women Voters v. Smith, 644 So. 2d 486 (Fla. 1994) (revenue limits). The court approved the proposal. Id. at 496.

[FN69]. Id. at 486 (voter approval of new taxes). The court disapproved the proposal based upon the ballot language because it substantially affected "specific provisions of the constitution without identifying those provisions for the voters." Id. at 492, 494.

[FN70]. Id. at 486 (property rights). The court disapproved the proposal on both single- subject and ballot language grounds. Id. at 495.

[FN71]. Id. at 486 (tax limitation). The court disapproved the proposal on single-subject grounds. Id. at 491.

[FN72]. The initiatives regarding limited marine net fishing and revenue limits were adopted; limited casinos was rejected. The criminal justice funding measure has not yet attained ballot position.

[FN73]. See Advisory Op. to Att'y Gen. re: Restricts Laws Related to Discrimination, 632 So. 2d 1018 (Fla. 1994); supra note 63.

[FN74]. See League of Women Voters v. Smith, 644 So. 2d 486 (Fla. 1994) (revenue limits); supra note 68.

[FN75]. See id. (voter approval of new taxes); supra note 69.

[FN76]. See id. (property rights); supra note 70.

[FN77]. However, to the extent this measure proposed to place a limit on the legislature's power to propose a tax, it is of constitutional stature.

[FN78]. One measure was reviewed twice. See Florida League of Cities v. Smith, 607 So. 2d 397 (Fla. 1992); Advisory Op. to Att'y Gen. re: Homestead Valuation Limitation, 581 So. 2d 586 (Fla. 1991). In addition, another question pertaining to the initiative process, but not involving content or ballot language, was reviewed in State ex rel. Citizen's Proposition for Tax Relief v. Firestone, 386 So. 2d 561 (Fla. 1980).

[FN79]. The court held that the following twelve initiatives complied with the statutory requirements: ethics in government; casinos (1978); noneconomic damages limitation; English as the official language of Florida; state-operated lotteries; casinos (1986); homestead valuation limitation; limited marine net fishing; criminal justice funding; limited casinos; revenue limits; and limited political terms in certain elective offices. Criminal justice funding has not yet been certified for ballot position.

[FN80]. The voters adopted the following amendments: ethics in government; state- operated lotteries; English as the official language of Florida; homestead valuation limitation; limited political terms in certain elective offices; limited marine net fishing; and revenue limits.

[FN81]. See League of Women Voters v. Smith, 644 So. 2d 486 (Fla. 1994) (including initiatives concerning revenue limits,

voter approval of new taxes, property rights, and tax limitations, all of which were sponsored by Tax Cap Committee).

[FN82]. The commission was created pursuant to S 2 of article XI of the Florida Constitution.

[FN83]. See Smith v. American Airlines, Inc., 606 So. 2d 618 (Fla. 1992).

[FN84]. The "Taxpayer's Bill of Rights," S 26 of article I of the Florida Constitution, is a constitutional travesty because it places no substantive limit on governmental power. Section 19 of article III of the Florida Constitution, pertaining to budgeting and appropriations processes, is properly a statutory measure, with the possible exception that it may permit greater legislative control over judicial budgets than would otherwise be allowable under Chiles v. Children A, B, C, D, E & F, 289 So. 2d 260 (Fla. 1981). The voters rejected a local option sales tax.

[FN85]. A compilation of constitutional amendments is maintained in the office of the secretary of state (listing of amendments on file with author).

[FN86]. See Askew v. Firestone, 421 So. 2d 151 (Fla. 1982) (removing proposed amendment to S 8, article II of the Florida Constitution from ballot on grounds of deceptive ballot language).

[FN87]. The people approved an amendment to article I, S 12 of the Florida Constitution. However, a proposed amendment to article I, S 18 of the Florida Constitution was rejected. See Smathers v. Smith, 338 So. 2d 825 (Fla. 1976); see also Grose v. Firestone, 422 So. 2d 303 (Fla. 1982).

[FN88]. Of these, 24 were reviewed by the supreme court and one was reviewed by a district court of appeal. See Watt v. Firestone, 491 So. 2d 592 (Fla. 1st Dist. Ct. App.), rev. denied, 494 So. 2d 1153 (Fla. 1986). One case, State v. Firestone, 386 So. 2d 561 (Fla. 1980), dealt with a collateral issue other than substance or ballot language.

[FN89]. Overload occurred in the years 1970, 1972, 1974, 1976, 1978, 1980, 1984, 1986, 1988, 1992, and 1994. A compilation of constitutional amendments is maintained in the office of the secretary of state (listing of amendments on file with Author).

[FN90]. Amendments to article III, S 1 and article VII, S 1 of the Florida Constitution were proposed by the legislature. See supra note 72 and accompanying text for the proposals made by initiative.

[FN91]. Little & Medenblik, supra note 33, at 45-46.

[FN92]. The Constitution Revision Commission convened in 1978 and will meet once every 20 years. Fla. Const. art. XI, S 2. The Taxation and Budget Reform Commission convened in 1990 and will meet once every 10 years. Id. art. XI, S 6.

[FN93]. The earliest judicial expression of this point is unknown to me. In 1839, the Illinois Supreme Court deemed it to be a settled maxim: "No proposition is better settled, than that a state constitution is a limitation upon the powers of the legislature, and that the legislature possesses every power not delegated to some other department, or expressly denied to it by the constitution." Field v. People ex rel. McClernand, 3 Ill. (3 Scam.) 79, 96 (1839).

[FN94]. Smathers v. Smith, 338 So. 2d 825, 827 (Fla. 1976); see Stone v. State, 71 So. 634, 635 (Fla. 1916) ("The Constitution does not grant particular legislative powers, but contains specific limitations of the general lawmaking power of the Legislature . . . ."); City of Jacksonville v. Bowden, 64 So. 769, 771 (Fla. 1914) ("The lawmaking power of the Legislature of a state is subject only to the limitations provided in the state and federal Constitutions . . . .").

[FN95]. See State v. Atlantic Coast Line R.R., 47 So. 969, 974 (Fla. 1908) ("The purpose of the Constitution is to secure efficient government by the harmonious co-operation of the separate, independent departments.").

[FN96]. In Sylvester v. Tindall, the supreme court acknowledged the importance of the separation of powers:
It is true that this separation of the powers of government is fundamental to the very existence of our form of state and Federal governments and is one of the most important principles of government guaranteeing the liberty of the people. While we have held that there may be a certain blending of powers in administrative boards and commissions, in a broad sense we

have preserved these separations of the powers of government, and the independence of each department, which is so vital to the freedom of our people from tyranny and oppression. This separation of powers, coupled with the fundamental individual rights which are guaranteed by our bill (of) rights, prevents the exercise of autocratic power and is essential to the perpetuity of our form of government. "Thus no department, not even the legislative, has unlimited power under our system of government."
Sylvester v. Tindall, 18 So. 2d 892, 899 (Fla. 1944) (en banc) (citations omitted).

[FN97]. "We must bear in mind that we are dealing with provisions of the Constitution and not with statutes. We are dealing with the supreme law as adopted by the people and not with legislative enactments." Coleman v. State ex rel. Race, 159 So. 504, 506 (Fla. 1935).

[FN98]. See Little & Medenblik, supra note 33, at 43.

[FN99]. See Fla. Const. art. I, S 26; id. art. III, S 19.

[FN100]. Id. art. VI, S 5.

[FN101]. City of Winter Haven v. State, 170 So. 100, 103 (Fla. 1936).

[FN102]. Fla. Const. art. III, S 1 (emphasis added).

[FN103]. For example, to obtain a ballot position a statutory initiative might only require petitions signed by two percent of the number of voters who participated in the preceding presidential election, as opposed to eight percent for constitutional initiatives. See supra note 12.

[FN104]. Weber v. Smathers, 338 So. 2d 819, 824 (Fla. 1976) (Roberts, J., dissenting), overruled in part by Floridians Against Casino Takeover v. Let's Help Florida, 363 So. 2d 337 (Fla. 1978).

[FN105]. Id. at 824.

[FN106]. Fine v. Firestone, 448 So. 2d 984, 996 (Fla. 1984) (Shaw, J., concurring).

[FN107]. "There is little doubt that it was the clear intent of the authors of the initiative provision and its amendment (i.e., the 1972 amendment substituting the one-subject standard to supplant the one-section standard) that it be more restrictive and more difficult to amend the Constitution by the initiative method rather than Legislative Resolution or a Constitutional Convention . . . ." Weber, 338 So. 2d at 824 (Roberts, J., dissenting).

[FN108]. Fine, 448 So. 2d at 994 (McDonald, J., concurring).

[FN109]. See Fla. Const. art. XI, S 3; id. art. VII, S 4(c); id. art. II, S 9; id. art. X, S 15; id. art. II, S 8.

[FN110]. Weber, 338 So. 2d at 824 (Roberts, J., dissenting).

[FN111]. A compilation of constitutional amendments is maintained in the office of the secretary of state (listing of amendments on file with Author).

[FN112]. A compilation of constitutional amendments is maintained in the office of the secretary of state (listing of amendments on file with Author).

[FN113]. See, e.g., Advisory Op. to Att'y Gen. re: Limited Marine Net Fishing, 620 So. 2d 997, 1000 (Fla. 1993) (McDonald, J., concurring).

[FN114]. Id.

[FN115]. Id.

[FN116]. See supra p. 410.

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Constitutions of the Several states

Alphabetically by State

SORTED BY	(sort)		(sort)	(sort)
State	**Constitution**		**adopted by Constitutional Convention** ***[unless otherwise indicated]***	**Ratified by vote of the People** ***[unless otherwise indicated]***
Alabama	**The 22nd state**, Admitted to the Union as a State, 14 December 1819 [by a Joint Resolution of Congress]			
	Enabling Act ***(of the Congress of the United States)***: 2 March 1819 [authorizing formation of a State government and Admission thereafter]			
	1st	1819-1865	2 August 1819 *[Convention convened, 5 July 1819]*	2 August 1819 *[not submitted to the People; effective upon Admission, 14 December 1819]*
	2nd	1865-1868	30 September 1865 *[Convention convened, 12 September 1865]*	30 September 1865 *[not submitted to the People]*
	3rd	1868-1875	6 December 1867 *[Convention convened, 5 November 1867]*	1868
	4th	1875-1901	2 October 1875 *[Convention convened, 6 September 1875]*	16 November 1875 *[ratified by vote of 95,672 to 30,004; effective, 6 December 1875]*
	5th	**1901--**	**3 September 1901** [Convention convened, 21 May 1901]	**28 November 1901**
Alaska	**The 49th state**, Admitted to the Union as a State, 3 January 1959 [upon Proclamation by President Dwight Eisenhower]			
	Enabling Act ***(of the Congress of the United States)***: 7 July 1958 [recognizing a State government already formed]			
	1st	**1959--**	**5 February 1956** [Convention convened, 8 November 1955]	**24 April 1956** [effective upon Admission, 3 January 1959]
Arizona	**The 48th state**, Admitted to the Union as a State, 14 February 1912 [upon Proclamation by President William Howard Taft that Arizona had met the conditions of his 15 August 1911 veto of that portion of a Joint Resolution of the 62nd Congress (H.J. Res 14) admitting both Arizona and New Mexico pertaining to Arizona alone]			
	Enabling Act ***(of the Congress of the United States)***: 20 June 1910 [authorizing formation of a State government and Admission thereafter; this Enabling Act replaced an earlier Enabling Act of 16 June 1906 which was conditional upon Arizona and New Mexico agreeing to reunite as a single State of "Arizona", a proposition that was rejected by the People of Arizona on 6 November 1906 by a vote of 16,265 to 3,141 (the aggregate vote of the two Territories was 31,000 to 29,336 against this proposition)]			
	1st	**1912--**	**9 December 1910** [Convention convened, 10 October 1910]	**11 December 1911** [effective upon Admission, 14 February 1912. (This Constitution was originally ratified by the People, 9 February 1911 but- as President William Howard Taft had vetoed a Joint Resolution of

				the 62nd Congress admitting Arizona [H.J. Res 14] on 15 August 1911 [due to his objection to the provision within this document providing for Recall of Judges]- this Constitution had to be resubmitted to the People so that Judges could be exempted from the Recall provision in order to satisfy the requirements of a second Joint Resolution of the 62nd Congress [S.J. Res 57] signed into law by President Taft on 21 August 1911)]
Arkansas	**The 25th state**, Admitted to the Union as a State, 15 June 1836 [Enabling Act served also as Act of Admission. Supplementary Enabling Act adopted by Congress, 23 June 1836; accepted by Ordinance of the Arkansas General Assembly, 18 October 1836]			
	Enabling Act *(of the Congress of the United States)*: 15 June 1836 [recognizing a State government already formed and admitting the State forthwith]			
	1st	1836-1864	30 January 1836 *[Convention convened, 4 January 1836]*	30 January 1836 *[not submitted to the People; effective upon Admission, 15 June 1836]*
	2nd	1864-1868	19 January 1864 *[adopted by Mass Meeting assembled 4 January 1864]*	14 March 1864 *[ratified by vote of 12,177 to 266]*
	3rd	1868-1874	11 February 1868 *[Convention convened, 7 January 1868]*	13 March 1868 *[ratified by vote of 27,913 to 26,597]*
	4th	**1874--**	**7 September 1874** [Convention convened, 14 July 1874]	**13 October 1874**
California	**The 31st state**, Admitted to the Union as a State, 9 September 1850 [by an Act of Congress]			
	Enabling Act: 13 February 1850 [Congress twice failed to pass Enabling Acts for California: in 1849 and 1850; the functional equivalent of an Enabling Act was President Zachary Taylor submitting the State's new Constitution to Congress via Special Message on this date]			
	1st	1850-1879	13 October 1849 *[Convention convened, 1 September 1849]*	13 November 1849 *[ratified by vote of 12,061 to 811; effective upon Admission, 9 September 1850]*
	2nd	**1880--**	**3 March 1879** [Convention convened, 28 September 1878]	**7 May 1879** [effective, 1 January 1880]
Colorado	**The 38th state**, Admitted to the Union as a State, 1 August 1876 [upon Proclamation by President Ulysses S. Grant. (Earlier, an Act of Admission for Colorado- under the 1864 Enabling Act- had been twice vetoed by President Andrew Johnson, on 15 May 1866 and 28 January 1867)]			
	Enabling Act *(of the Congress of the United States)*: 3 March 1875 [authorizing formation of a State government and Admission thereafter. (A previous Enabling Act- merely authorizing formation of a State government- had been passed by Congress, 21 March 1864, but was mooted with the vetoes of President Andrew Johnson re: Colorado's Admission)]			
	1st	**1876--**	**14 March 1876** [Convention convened, 20 December 1875. (An earlier Convention, convened	**1 July 1876** [effective upon Admission, 1 August 1876. (The earlier

			under authority of the 1864 Enabling Act in August 1865, had drafted a State Constitution mooted by President Andrew Johnson's two vetoes of Colorado's Admission)]	Constitution drafted in August 1865 had been ratified by the People on 5 September 1865)]
Connecticut	**The 5th state**, Ratified Constitution of the United States, 9 January 1788			
	Enabling Act: [None. One of the 13 original States which declared their independence from the nascent British Empire on 4 July 1776. Connecticut operated under its colonial Charter of 1662 after independence until 1818]			
	1st	1818-1965	15 September 1818 *[Convention convened, 26 August 1818]*	5 October 1818 *[ratified by vote of 13,918 to 12,364; effective, 12 October 1818. **(NOTE:** On 22 June 1953, the General Assembly adopted a recodification of this Constitution which was subsequently approved by the voters and became effective, 1 January 1955; however, this 1955 recodification is not generally considered to have been a "2nd Constitution" 'per se')]*
	2nd	**1965--**	**28 October 1965** [Convention convened, 1 July 1965]	**14 December 1965** [effective, 30 December 1965]
Delaware	**The 1st state**, Ratified Constitution of the United States, 7 December 1787			
	Enabling Act *(of the Congress of the United States)*: [None. One of the 13 original States which declared their independence from the nascent British Empire on 4 July 1776]			
	1st	1776-1792	10 September 1776 *[Convention convened, 27 August 1776]*	21 September 1776 *[not submitted to the People: date is that on which this Constitution was proclaimed]*
	2nd	1792-1831	12 June 1792 *[Convention convened earlier in June 1792]*	12 June 1792 *[not submitted to the People]*
	3rd	1831-1897	2 December 1831 *[Convention convened, 8 November 1831]*	2 December 1831 *[not submitted to the People]*
	4th	**1897--**	**4 June 1897** [Convention convened, 1 December 1896]	**4 June 1897** [not submitted to the People; effective, 10 June 1897]
Florida	**The 27th state**, Admitted to the Union as a State, 3 March 1845 [Enabling Act served also as Act of Admission]			
	Enabling Act *(of the Congress of the United States)*: 3 March 1845 [recognizing a State government already formed and admitting the State forthwith]			
	1st	1845-1865	11 January 1839 *[Convention convened, 3 December 1838]*	11 January 1839 *[not submitted to the People; effective upon Admission, 3 March 1845]*
	2nd	1865-1868	7 November 1865 *[Convention convened, 25 October 1865]*	7 November 1865 *[not submitted to the People]*
	3rd	1868-1887	25 February 1868 *[Convention convened, 20 January 1868]*	May 1868 *[ratified by vote of 14,520 to 9,491]*
	4th	1887-1969	3 August 1885 *[Convention convened, 9 June 1885]*	2 November 1886 *[effective, 1 January 1887]*

	5th	**1969--**	**3 July 1968** [drafted and enacted by a Special Session of the Legislature- convened, 24 June 1968]	**5 November 1968** [effective, 7 January 1969]
Georgia	**The 4th state**, Ratified Constitution of the United States, 2 January 1788			
	Enabling Act *(of the Congress of the United States)*: [None. One of the 13 original States which declared their independence from the nascent British Empire on 4 July 1776]			
	1st	1777-1789	5 February 1777 *[Convention convened, 1 October 1776]*	5 February 1777 *[not submitted to the People]*
	2nd	1789-1798	24 November 1788 *[Convention convened, 4 November 1788]*	4 January 1789 *[ratified by popular Convention; declared to be in force by a second popular Convention called to consider amendments proposed by the January Convention, 6 May 1789]*
	3rd	1798-1865	30 May 1798 *[Convention convened, 4 May 1798]*	30 May 1798 *[not submitted to the People]*
	4th	1865-1868	30 October 1865 *[Convention convened, 25 October 1865]*	7 November 1865
	5th	1868-1877	March 1868 *[Convention convened, 9 December 1867]*	11 March 1868 *[ratified by vote of 89,007 to 71,309]*
	6th	1877-1945	25 August 1877 *[Convention convened, July 1877]*	5 December 1877
	7th	1945-1976	1945 *[drafted by a Constitutional Commission which met from 1 October 1943 thru 9 December 1944; the Commission's work was subsequently enacted by the General Assembly and submitted to the People]*	7 August 1945
	8th	1977-1983	31 March 1976 *[drafted by a Constitutional Commission; enacted by the General Assembly and submitted to the People on this date]*	2 November 1976 *[effective, 1 January 1977]*
	9th	**1983--**	**1982** [enacted by the General Assembly]	**2 November 1982** [effective, 1 July 1983]
Hawaii	**The 50th state**, Admitted to the Union as a State, 21 August 1959 [upon Proclamation by President Dwight Eisenhower that the conditions set forth in the Enabling Act had been satisfactorily met]			
	Enabling Act *(of the Congress of the United States)*: 18 March 1959 [recognized a State government already formed and set certain conditions for the Admission of Hawaii into the Union, all of which were approved by the voters of the Territory on 27 June 1959]			
	1st	**1959--**	**22 July 1950**	**7 November 1950** [The approval of Statehood by the voters of Hawaii in the election held this date was considered tantamount to ratification of its Constitution; the Constitution was effective upon Admission, 21 August 1959]
Idaho	**The 43rd state**, Admitted to the Union as a State, 3 July 1890 [by an Act of Congress recognizing a State government already formed]			
	Enabling Act: [Idaho never had an Enabling Act prior to its Admission as a State]			

	1st	**1890--**	**6 August 1889** [Convention convened, 4 July 1889]	**5 November 1889** [effective upon Admission, 3 July 1890]
Illinois	**The 21st state**, Admitted to the Union as a State, 3 December 1818 [by a Joint Resolution of Congress]			
	Enabling Act *(of the Congress of the United States)*: 18 April 1818 [authorizing formation of a State government and Admission thereafter]			
	1st	1818-1848	26 August 1818 *[Convention convened, 1 August 1818]*	26 August 1818 *[not submitted to the People; effective upon Admission, 3 December 1818]*
	2nd	1848-1870	31 August 1847 *[Convention convened, 7 June 1847]*	5 March 1848 *[ratified by vote of 59,887 to 15,859; effective, 1 April 1848]*
	3rd	1870-1971	13 May 1870 *[Convention convened, 13 December 1869]*	2 July 1870 *[ratified by vote of 134,227 to 35,443; effective, 8 August 1870]*
	4th	**1971--**	**3 September 1970** [Convention convened, 8 December 1969]	**15 December 1970** [effective, 1 July 1971]
Indiana	**The 19th state**, Admitted to the Union as a State, 11 December 1816 [by a Joint Resolution of Congress]			
	Enabling Act *(of the Congress of the United States)*: 19 April 1816 [authorizing the formation of a State government and Admission thereafter]			
	1st	1816-1851	29 June 1816 *[Convention convened, 10 June 1816]*	29 June 1816 *[not submitted to the People; effective upon Admission, 11 December 1816]*
	2nd	**1851--**	**10 February 1851** [Convention convened, 7 October 1850]	**4 August 1851** [ratified by vote of 109,319 to 26,755; effective, 1 November 1851]
Iowa	**The 29th state**, Admitted to the Union as a State, 28 December 1846 [by an Act of Congress]			
	Enabling Act *(of the Congress of the United States)*: 3 March 1845 [authorizing formation of a State government alone]			
	1st	1846-1857	18 May 1846 *[Convention convened, 4 May 1846]*	3 August 1846 *[ratified by vote of 9,492 to 9,036; effective upon Admission, 28 December 1846]*
	2nd	**1857--**	**5 March 1857** [Convention convened, 19 January 1857]	**3 August 1857** [ratified by vote of 40,311 to 38,681]
Kansas	**The 34th state**, Admitted to the Union as a State, 29 January 1861 [by an Act of Congress recognizing a State government already formed. (a previous Act of Admission of 4 May 1858, conditional upon adoption of the so-called "Lecompton Constitution", was mooted when that document was rejected in a vote held in August 1858]			
	Enabling Act: [Kansas never had an Enabling Act prior to its Admission as a State]			
	1st		**2 November 1855** [Convention convened, 23 October 1855. This was the so-called "Topeka Constitution" put forth by so-called "Free Staters" opposed to the actions of the pro-slavery Territorial legislature which,	**15 December 1855** [ratified by a vote of 1,731 to 46; the "Topeka Constitution" was rejected by President Franklin Pierce when, as part of a Special Message to Congress on 24

			after expelling its anti-Slavery members on 2 July 1855, had subsequently passed a series of measures in defense of Slavery in Kansas; a Convention of such Free Staters had met at Lawrence in August 1855 and, after repudiating this pro-Slavery legislation, met again in Big Springs, 5 September 1855, to elect delegates to a convention in Topeka which was specifically authorized to draw up this 1st State Constitution]	January 1856, he referred to this document as the product of "persons confessedly not constituting the body politic"; thus, this Constitution never became effective]
	2nd		**7 November 1857** [Convention convened, 5 September 1857. This was the so-called "Lecompton Constitution" which was put forth by "Slave Staters". The originally planned ratification vote called for in this document's "Schedule" only provided for a choice between this Consitution with Slavery permitted or this Constitution with Slavery prohibited (that is: there was no way to vote against this Constitution *per se*). The Territorial legislature- now under the control of the Free Staters- passed a law on 17 December 1857 ordering the "Lecompton Constitution" to be submitted to a "full and fair vote" (that is, with a third alternative- that of rejecting the "Lecompton Constitution"- on the ballot) come the following 4 January (the date this Constitution's Schedule had set for the first election of State officers under the document)]	**21 December 1857** [Despite the new requirement for a third "against" option put forth by the Territorial legislature only days before, the original ratification vote of this date went ahead anyway and- with Free Staters boycotting it- this Constitution with Slavery permitted was ratified by a vote of 6,226 to 589 for this Constitution without Slavery (some sources cite the vote as 6,143 to 580). Meanwhile, the legislatively-authorized ratification vote was held only in anti-Slavery areas of the Territory on 4 January 1858 along with the "State" elections held Territory-wide: here, the "Lecompton Constitution" was overwhelmingly rejected by a vote of 10,126 against to 138 for this document with Slavery and 24 for this Constitution without Slavery (Free Staters also captured control of all the "State" offices elected at the same time in any event). The adoption of this "Lecompton Constitution" had been supported by President James Buchanan in his first Annual Message to Congress on 8 December 1857 and was reiterated by the President in the Special Message to Congress on 2 February 1858 in which he submitted a copy of this document to that body; Congress passed an Act of Admission with conditions (as noted under the "3rd Constitution", below) on 4 May 1858, but this "Lecompton Constitution" had no chance of ever becoming effective once the Free Staters had won the "State" elections held under what had been, after all, a Slave Staters' document]
	3rd		**3 April 1858** [Convention convened, 23 March 1858.	**18 May 1858** [ratified by vote of 4,346 to 1,257.

			This was the so-called "Leavenworth Constitution", the answer of Free Staters to the Slave Staters' "Lecompton Constitution" of 1857: it had been drafted as a reaction to what Free Staters felt was a rigged original ratification vote for that other Constitution on 21 December 1857; however, Congress had- in the meantime- passed an act, on 4 May 1858, admitting Kansas as a State under the "Lecompton Constitution" pending a new ratification vote up or down on that other document on 21 August 1858: the "Lecompton Consitution" was overwhelmingly rejected by a vote of only 1,788 for it as opposed to 11,300 against]	After the "Lecompton Constitution" was soundly defeated once and for all in August 1858, this "Leavenworth Constitution" was put forth by the Free Staters as a viable alternative to that other Constitution based on claims that it had already been ratified by the People of Kansas prior to this latest ratification vote "do-over". The Buchanan Administration, however, strenuously opposed this "Leavenworth Constitution" on the same grounds on which the previous Administration had opposed the "Topeka Constitution"- that the drafting Convention was not truly representative of *all* the political factions in the Territory- and, thus, it never became effective]
	4th	**1861--**	**29 July 1859** [Convention convened, 5 July 1859. This was the so-called "Wyandotte Consitution" which formed the basis for Kansas' being admitted to the Union as a Free State (and- as things turned out- the very last State admitted to the Union prior to the outbreak of the American Civil War). The Free Staters now being in complete control of the Territorial government, this Constitution was drafted in order to deflect any claim by pro-Slavery opponents that either of the two previous Constitutions drafted by Free-Stater Conventions (that is, those drafted at Topeka and Leavenworth) were illegal; by holding yet a third Free-Stater Constitutional Convention, this potential problem was deftly avoided]	**4 October 1859** [ratified by vote of 10,421 to 5,530; effective upon Admission, 29 January 1861]
Kentucky	**The 15th state**, Admitted to the Union as a State, 1 June 1792 [the date for achieving Statehood had been set in the Enabling Act]			
	Enabling Act *(of the Congress of the United States)*: 4 February 1791 [accepting the cession by Virginia- in legislation adopted by that State on 18 December 1789- of its "District of Kentucky" and authorizing the formation of a State government and Admission thereafter]			
	1st	1792-1799	19 April 1792 *[Convention convened, 2 April 1792]*	19 April 1792 *[not submitted to the People; effective upon Admission, 1 June 1792]*
	2nd	1800-1850	17 August 1799 *[Convention convened, 22 July 1799]*	17 August 1799 *[not submitted to the People; effective 1 January 1800]*
	3rd	1850-1891	7 May 1850 *[Convention convened, 1 October 1849]*	11 June 1850 *[ratified by a vote of 71,563 to 20,302]*
	4th	**1891--**	**28 September 1891**	**3 August 1891**

			[Convention convened, 9 September 1890; the Convention submitted its work to the People on 11 April 1891 and recessed. On 2 September 1891, after this Constitution had already been ratified by the People, the Convention reconvened and- after approving a number of amendments to it- declared the amended result to have been adopted on 28 September]	[ratified by a vote of 213,950 to 74,446]
Louisiana	**The 18th state**, Admitted to the Union as a State, 30 April 1812 [by an Act of Congress of 8 April 1812]			
	Enabling Act *(of the Congress of the United States)*: 20 February 1811 [authorizing the formation of a State government alone]			
	1st	1812-1845	22 January 1812 *[Convention convened, 4 November 1811]*	22 January 1812 *[not submitted to the People; effective upon Admission, 30 April 1812]*
	2nd	1845-1852	16 May 1845 *[Convention convened, 5 August 1844]*	5 November 1845 *[effective, 1 December 1845]*
	3rd	1852-1864	31 July 1852 *[Convention convened, 5 July 1852]*	1 November 1852 *[effective, 29 November 1852]*
	4th	1864-1868	23 July 1864 *[Convention convened, 4 April 1864]*	5 September 1864 *[ratified by vote of 6,836 to 1,566; effective, 19 September 1864]*
	5th	1868-1879	2 March 1868 *[Convention convened, December 1867]*	18 August 1868 *[ratified by a vote of 66,152 to 48,739]*
	6th	1879-1898	23 July 1879 *[Convention convened, 21 April 1879]*	2 December 1879 *[effective, 29 December 1879]*
	7th	1898-1913	12 May 1898 *[on 22 November 1913, a Convention formally adopted a recodification of this Constitution; this recodification was not submitted to the People. In the opinion of 'TheGreenPapers.com', this 1913 recodification is not a new Constitution in and of itself]*	12 May 1898 *[not submitted to the People]*
	8th	1921-1974	21 June 1921 *[Convention convened, 1 March 1921]*	21 June 1921 *[not submitted to the People]*
	9th	**1975--**	**1974** [Convention convened, 5 January 1973]	**20 April 1974** [effective, 1 January 1975]
Maine	**The 23rd state**, Admitted to the Union as a State, 15 March 1820 [by an Act of Congress of 3 March 1820 recognizing a State government already formed]			
	Enabling Act: [Maine never had an Enabling Act: instead, the Commonwealth of Massachusetts passed enabling legislation of its own- first separating its "District of Maine" from the rest of the State, 19 June 1819- an action approved by the voters in Maine on 19 July 1819 by 17,001 to 7,132; Massachusetts passed a follow-up ordinance officially accepting the fact of Maine's imminent statehood on 25 February 1820, thereby allowing Congress to formally admit Maine as a State]			
	1st	**1820--**	**29 October 1819** [Convention convened, 11 October 1819 **(NOTE:** on 12 January 1875, the Legislature authorized a Commission to propose such amendments as would	**6 December 1819** [ratified by special Town Meetings. **(NOTE:** The amendments proposed by the 1875 Commission were ratified by

			update and modernize this Constitution; on 24 February 1875, this Commission proposed 9 amendments to be added to the 1819 Constitution and the 12 amendments thereto adopted prior to 1875: one of these 9 new amendments authorized the Chief Justice of the Supreme Judicial Court to recodify the 1819 Constitution and amendments)]	the People on 13 September 1875, after which the Chief Justice of the Supreme Judicial Court reworked the 1819 Constitution and its now 21 amendments into a newly recodified document: the Legislature accepted this recodification as the official Constitution of Maine on 23 February 1876; however, this 1875/1876 recodification is not generally considered to be a new Constitution *per se*)]
Maryland	**The 7th state**, Ratified Constitution of the United States, 28 April 1788			
	Enabling Act *(of the Congress of the United States)*: [None. One of the 13 original States which declared their independence from the nascent British Empire on 4 July 1776]			
	1st	1776-1851	11 November 1776 *[Convention convened, 14 August 1776]*	11 November 1776 *[not submitted to the People]*
	2nd	1851-1864	13 May 1851 *[Convention convened, 4 November 1850]*	4 June 1851 *[effective, 4 July 1851]*
	3rd	1864-1867	6 September 1864 *[Convention convened, 27 April 1864]*	13 October 1864 *[ratified by a vote of 30,174 to 29,799: a most controversial result at a time when the State, while not part of the Confederacy, was a hotbed of much pro-Southern sentiment: the vote of those voting at their usual polling places was opposed to this Constitution by 29,536 to 27,541; however, the soldiers' vote (but only that of those soldiers from Maryland serving in the Union Army) was overwhelmingly in favor (2,633 to 263) and was, therefore, enough to make the total vote in favor of this Constitution]*
	4th	**1867--**	**17 August 1867** [Convention convened, 8 May 1867]	**18 September 1867** [ratified by a vote of 27,152 to 23,036; effective, 5 October 1867]
Massachusetts	**The 6th state**, Ratified Constitution of the United States, 6 February 1788			
	Enabling Act *(of the Congress of the United States)*: [None. One of the 13 original States which declared their independence from the nascent British Empire on 4 July 1776]			
	1st	**1780--**	**2 March 1780** [Convention convened, 1 September 1779]	**15 June 1780** [ratified by the annual Town Meetings in the Spring of 1780: the Constitutional Convention thereafter resumed to consider amendments proposed at these Town Meetings and, on 15 June 1780, declared the Constitution to have been ratified; this Constitution became effective, 25 October 1780 and remains, at least ostensibly, the oldest written

				Constitution still in operation in the entire World. (The Constitutional Convention of 1919 recodified this document by incorporating the 66 amendments hitherto added to the 1780 Constitution into the body of that Constitution: this recodification was approved by the voters on 4 November 1919; however, this recodification is not generally considered to be a new Constitution *per se*)]
Michigan	**The 26th state**, Admitted to the Union as a State, 26 January 1837 [The Convention called for the purpose having- on 15 December 1836- accepted the State boundaries as set forth in the Enabling Act, Michigan was admitted as a State by an Act of Congress]			
	Enabling Act *(of the Congress of the United States)*: 15 June 1836 [This Enabling Act, recognizing a State government already formed, authorized the election of a Convention for the stated purpose of modifying the State's new Constitution to conform to State boundaries set forth by this Enabling Act]			
	1st	1837-1850	29 June 1835 *[Convention convened, 11 May 1835]*	2 November 1835 *[effective upon Admission, 26 January 1837]*
	2nd	1850-1908	15 August 1850 *[Convention convened, 3 June 1850]*	5 November 1850 *[ratified by vote of 36,169 to 9,433]*
	3rd	1909-1963	3 March 1908 *[Convention convened, 22 October 1907]*	3 November 1908 *[effective, 1 January 1909]*
	4th	**1964--**	**1 August 1962** [Convention convened, 3 October 1961]	**1 April 1963** [effective, 1 January 1964]
Minnesota	**The 32nd state**, Admitted to the Union as a State, 11 May 1858 [by an Act of Congress]			
	Enabling Act *(of the Congress of the United States)*: 26 February 1857 [authorizing formation of a State government alone]			
	1st	**1858--**	**29 August 1857** [Convention convened, 13 July 1857]	**13 October 1857** [ratified by a vote of 36,240 to 700; effective upon Admission, 11 May 1858]
Mississippi	**The 20th state**, Admitted to the Union as a State, 10 December 1817 [by a Joint Resolution of Congress]			
	Enabling Act *(of the Congress of the United States)*: 1 March 1817 [authorizing formation of a State government and Admission thereafter]			
	1st	1817-1832	15 August 1817 *[Convention convened, 7 July 1817]*	2 September 1817
	2nd	1832-1868	26 October 1832 *[Convention convened, 10 September 1832]*	4 December 1832
	3rd	1868-1890	15 May 1868 *[Convention convened, 7 January 1868]*	1 December 1868 *[ratified by a vote of 105,223 to 954 upon resubmission after this Constitution had originally been rejected by the People, 28 June 1868, by a vote of 63,860 against to 56,231 for]*
	4th	**1890--**	**1 November 1890** [Convention convened, 12 August 1890]	**1 November 1890** [not submitted to the People: this

				action was challenged in the case of *Sproule v. Fredericks* but was upheld by the Mississippi Supreme Court [69 Miss. 898 (11 So. 472)]]
Missouri	**The 24th state**, Admitted to the Union as a State, 10 August 1821 [upon Proclamation by President James Monroe that conditions- set by a Joint Resolution of Congress on 2 March 1821 recognizing a State government already formed- had been satisfactorily met]			
	Enabling Act *(of the Congress of the United States)*: 6 March 1820 [authorizing the formation of a State government and Admission thereafter]			
	1st	1821-1865	19 July 1820 *[Convention convened, 12 June 1820]*	28 August 1820 *[effective upon Admission, 10 August 1821]*
	2nd	1865-1875	8 April 1865 *[Convention convened, 6 January 1865]*	6 June 1865 *[ratified by a vote of 43,670 to 41,808; effective, 4 July 1865]*
	3rd	1875-1945	2 August 1875 *[Convention convened, 5 May 1875]*	30 October 1875 *[ratified by a vote of 90,600 to 14,362; effective, 30 November 1875]*
	4th	**1945--**	**29 September 1944** [Convention convened, 21 September 1943]	**27 February 1945** [effective, 30 March 1945]
Montana	**The 41st state**, Admitted to the Union as a State, 8 November 1889 [upon Proclamation by President Benjamin Harrison]			
	Enabling Act *(of the Congress of the United States)*: 22 February 1889 [authorizing formation of a State government and Admission thereafter]			
	1st	1889-1973	17 August 1889 *[Convention convened, 4 July 1889]*	1 October 1889 *[ratified by a vote of 24,676 to 2,274; effective upon Admission, 8 November 1889]*
	2nd	**1973--**	**22 March 1972** [Convention convened, 17 January 1972]	**6 June 1972** [effective, 1 July 1973]
Nebraska	**The 37th state**, Admitted to the Union as a State, 1 March 1867 [upon Proclamation by President Andrew Johnson that conditions- set by an Act of Congress on 9 February 1867 recognizing a State government already formed- had been satisfactorily met]			
	Enabling Act *(of the Congress of the United States)*: 19 April 1864 [authorizing formation of a State government and Admission thereafter]			
	1st	1867-1875	9 February 1866 *[drafted and enacted by the Territorial legislature]*	21 June 1866 *[ratified by a vote of 3,938 to 3,838; effective upon Admission, 1 March 1867]*
	2nd	**1875--**	**12 June 1875** [Convention convened, 11 May 1875]	**12 October 1875** [effective, 1 November 1875]
Nevada	**The 36th state**, Admitted to the Union as a State, 31 October 1864 [upon Proclamation by President Abraham Lincoln]			
	Enabling Act *(of the Congress of the United States)*: 21 March 1864 [authorizing formation of a State government and Admission thereafter]			
	1st	**1864--**	**28 July 1864** [Convention convened, 4 July 1864]	**7 September 1864** [effective upon Admission, 31 October 1864]
New Hampshire	**The 9th state**, Ratified Constitution of the United States, 21 June 1788			
	Enabling Act *(of the Congress of the United States)*: [None. One of the 13 original			

	States which declared their independence from the nascent British Empire on 4 July 1776]			
	1st	1776-1784	5 January 1776 *["Congress" (that is, a convention) convened, 21 December 1775; New Hampshire's 1st Constitution was the first Constitution ever drafted by an American commonwealth (that is, a British province becoming a State)]*	5 January 1776 *[not submitted to the People]*
	2nd	1784-1793	31 October 1783 *[Convention convened, 5 June 1781: a Constitution was drafted and sent to the Town Meetings of Spring 1782 for ratification; however, amendments proposed by these Town Meetings were so numerous that the Constitution was redrafted by the Convention. Resubmitted to the Town Meetings of Fall 1782, this redraft was also heavily altered by even more proposed amendments suggested at these Town Meetings. A third draft was necessary before it was resubmitted and accepted by the Town Meetings "as is". This October 1783 adoption date is the date the Convention adjourned 'sine die' after having declared this 2nd Constitution to have been ratified]*	1783 *[A requisite number of the Town Meetings of Spring 1783 finally ratified the third draft of this 2nd Constitution "as is" and it became effective, 2 June 1784]*
	3rd	**1793--**	**5 September 1792** [Convention convened, 7 September 1791; this Convention proposed 72 amendments to the 1784 Constitution to be redrafted into a whole new document and submitted the same to the People on 8 February 1792. **(NOTE:** The State of New Hampshire regards this 1792 draft as merely a recodification of the 1784 (2nd) Constitution and, thus, claims that the State has had only 2 Constitutions with the 1784 Constitution still in force; however, the earliest and best historical sources of the texts of State Constitutions considered this document to be a 3rd New Hampshire Constitution and, in the opinion of *TheGreenPapers.com*, these earliest sources seem to have been the more correct). This September 1792 adoption date is the date the Convention adjourned *sine die* after having declared this 3rd Constitution to have been ratified]	**27 August 1792** [46 of the 72 amendments proposed by the Convention of 1791-1792 were accepted by the People on 7 May 1792; the Convention then had to reconcile more than a few difficulties caused by not all the proposed amendments having been accepted and resubmitted a reworked draft to the People. This August 1792 ratification date refers to the acceptance of this Constitution by the People "as is". This 3rd Constitution became effective, 5 June 1793]
New Jersey	**The 3rd state**, Ratified Constitution of the United States, 18 December 1787			
	Enabling Act *(of the Congress of the United States)*: [None. One of the 13 original States which declared their independence from the nascent British Empire on 4 July 1776]			
	1st	1776-1844	2 July 1776 *["Provincial Congress" (a convention) convened, 26 May 1776]*	3 July 1776 *[not submitted to the People: date is that on which this Constitution was proclaimed]*
	2nd	1844-1947	29 June 1844 *[Convention convened, 14 May 1844]*	13 August 1844 *[ratified by vote of 20,276 to 3,526; effective, 2 September*

				1844]
	3rd	**1948--**	**10 September 1947** [Convention convened, 12 June 1947]	**4 November 1947** [ratified by a vote of 653,096 to 184,632; effective, 1 January 1948]
New Mexico	**The 47th state**, Admitted to the Union as a State, 6 January 1912 [upon Proclamation by President William Howard Taft that conditions- set by a Joint Resolution of the 62nd Congress (S.J. Res 57) on 21 August 1911 admitting the State- had been satisfactorily met]			
	Enabling Act *(of the Congress of the United States)*: 20 June 1910 [authorizing formation of a State government and Admission thereafter; this Enabling Act replaced an earlier Enabling Act of 16 June 1906 which was conditional upon Arizona and New Mexico agreeing to reunite as a single State of "Arizona", a proposition that was approved on 6 November 1906 in New Mexico by a vote of 26,195 to 14,735- but for which the aggregate vote was 31,000 to 29,336 against]			
	1st	**1912--**	**21 November 1910** [Convention convened, 3 October 1910]	**5 November 1911** [effective upon Admission, 6 January 1912. (This Constitution was originally ratified by the People, 21 January 1911; however, on 15 August 1911, President William Howard Taft vetoed a Joint Resolution of the 62nd Congress [H.J. Res. 14] admitting both Arizona and New Mexico due to his objections to Arizona's Constitution providing for Recall of Judges. Congress thereafter passed a second Joint Resolution [S.J. Res. 57] again admitting both States and, while requiring New Mexico to submit its original Amending Procedure to vote of the People [which had also been a provision of the earlier H.J. Res. 14], in effect demanded that Arizona remove its constitutional provision allowing for Recall of Judges: apparently, President Taft had no contrary position on the issue of New Mexico's Amending Procedure and signed S.J. Res. 57 on 21 August 1911. As a result, this Constitution had to be resubmitted to the People with an alternative Amending Procedure as required by S.J. Res. 57)]]
New York	**The 11th state**, Ratified Constitution of the United States, 26 July 1788			
	Enabling Act *(of the Congress of the United States)*: [None. One of the 13 original States which declared their independence from the nascent British Empire on 4 July 1776]			
	1st	1777-1821	20 April 1777 *[Provincial Congress (the 'de facto' legislature of New York at the time) reconstituted itself as the "Convention of State Representatives" for purposes of drafting a State Constitution, 10 July 1776]*	20 April 1777 *[not submitted to the People]*
	2nd	1823-	10 November 1821	17 January 1822

		1846	*[Convention convened, 28 August 1821]*	*[ratified by a vote of 74,732 to 41,402; effective, 1 January 1823]*
	3rd	1847-1894	9 October 1846 *[Convention convened, 1 June 1846]*	3 November 1846 *[ratified by a vote of 221,528 to 92,436; effective, 1 January 1847]*
	4th	**1895--**	**29 September 1894** [Convention convened, 8 May 1894]	**6 November 1894** [ratified by a vote of 410,697 to 327,402; effective, 1 January 1895. **(NOTE:** The work of the Constitutional Convention of 5 April 1938 to 26 August 1938, submitted to the People and ratified by a vote of 1,521,036 to 1,301,797 on 8 November 1938 [effective, 1 January 1939], is considered to merely be a recodification of the Constitution of 1894 and is, thus, not generally considered to be New York's "5th Constitution")]
North Carolina	**The 12th state**, Ratified Constitution of the United States, 21 November 1789			
	Enabling Act *(of the Congress of the United States)*: [None. One of the 13 original States which declared their independence from the nascent British Empire on 4 July 1776]			
	1st	1776-1868	18 December 1776 *[Convention convened, 12 November 1776]*	18 December 1776 *[not submitted to the People]*
	2nd	1868-1876	16 March 1868 *[Convention convened, 14 January 1868]*	April 1868 *[ratified by a vote of 93,118 to 74,009]*
	3rd	1876-1971	12 October 1875 *[Convention convened, 6 September 1875]*	7 November 1876 *[ratified by a vote of 122,912 to 108,829]*
	4th	**1971--**	**1969** [drafted and enacted by the General Assembly]	**3 November 1970** [effective, 1 July 1971]
North Dakota	**The 39th state**, Admitted to the Union as a State, 2 November 1889 [upon Proclamation by President Benjamin Harrison]			
	Enabling Act *(of the Congress of the United States)*: 22 February 1889 [authorizing formation of a State government and Admission thereafter]			
	1st	**1889--**	**17 August 1889** [Convention convened, 4 July 1889]	**1 October 1889** [ratified by a vote of 27,441 to 8,107; effective upon Admission, 2 November 1889. (A separate vote on Article 20- prohibiting the manufacture, sale and importation of intoxicating beverages- approved this provision by a vote of 18,552 to 17,393)]
Ohio	**The 17th state**, Admitted to the Union as a State, 1 March 1803 [by an Act of Congress of 19 February 1803 recognizing a State government already formed]			
	Enabling Act *(of the Congress of the United States)*: 30 April 1802 [authorizing the formation of a State government and Admission thereafter]			
	1st	1803-1851	29 November 1802 *[Convention convened, 1 November 1802]*	29 November 1802 *[not submitted to the People; effective upon Admission, 19*

				February (1 March) 1803]
	2nd	**1851--**	**10 March 1851** [Convention convened, 6 May 1850]	**17 June 1851** [ratified by a vote of 126,663 to 109,699; effective, 1 September 1851]
Oklahoma	**The 46th state**, Admitted to the Union as a State, 16 November 1907 [upon Proclamation by President Theodore Roosevelt]			
	Enabling Act *(of the Congress of the United States)*: 16 June 1906 [authorizing the formation of a State government with Admission thereafter (the State of Oklahoma was to be created by a merger of the incorporated Oklahoma Territory with the unincorpoarted Indian Territory)]			
	1st	**1907--**	**16 July 1907** [Convention convened, 20 November 1906]	**17 September 1907** [effective upon Admission, 16 November 1907]
Oregon	**The 33rd state**, Admitted to the Union as a State, 14 February 1859 [by an Act of Congress recognizing a State government already formed]			
	Enabling Act: [Oregon never had an Enabling Act prior to its Admission as a State]			
	1st	**1859--**	**18 September 1857** [Convention convened, 17 August 1857]	**9 November 1857** [ratified by a vote of 7,195 to 3,195; effective upon Admission, 14 February 1859]
Pennsylvania	**The 2nd state**, Ratified Constitution of the United States, 12 December 1787			
	Enabling Act *(of the Congress of the United States)*: [None. One of the 13 original States which declared their independence from the nascent British Empire on 4 July 1776]			
	1st	1776-1790	28 September 1776 *[Convention convened, 15 July 1776]*	28 September 1776 *[not submitted to the People]*
	2nd	1790-1838	2 September 1790 *[Convention convened, 24 November 1789; this Adoption date reflects the date the Convention adjourned sine die after having declared this Constitution in force as a result of first having "shewn the work" to the People and thereafter reconvening on 9 August 1790 to work on suggested amendments before proclaiming this Constitution in force]*	2 September 1790 *[The Convention had submitted this 2nd Constitution to the People for purposes of discussion and then recessed on 26 February 1790 but the People were not called upon to ratify it by an actual vote at the polls]*
	3rd	1839-1873	22 February 1838 *[Convention convened, 2 May 1837]*	November 1838 *[ratified by a vote of 113,971 to 112,759; effective, 1 January 1839]*
	4th	**1874--**	**3 November 1873** [Convention convened, 12 November 1872]	**16 December 1873** [effective, 1 January 1874 **(NOTE:** This Constitution was recodified in three stages between 1966 and 1968: the General Assembly drafted two sets of amendments which were approved by the voters on 17 May 1966 and 16 May 1967, respectively; a limited Constitutional Convention then met from 1 December 1967 thru 29 February 1968 to work these 1966 and 1967 amendments- along with any amendments proposed by the Convention- into a recodified document which was

				approved by the voters on 23 April 1968. However, this recodification of 1968 is not generally considered to be a "5th Constitution" *per se*)]
Rhode Island	**The 13th state**, Ratified Constitution of the United States, 29 May 1790			
	Enabling Act: [None. One of the 13 original States which declared their independence from the nascent British Empire on 4 July 1776. Rhode Island operated under its colonial Charter of 1663 until 1843]			
	1st		**18 November 1841** [This was the so-called "People's Constitution", framed by a Convention convened on 4 October 1841; calling for an independent Judiciary and universal manhood suffrage (both long denied by the colonial Charter of 1663 under which the State then operated), this document set the stage for "Dorr's Rebellion" (Thomas Dorr was elected Governor under this "People's Constitution" on 18 April 1842 but was strongly rebuffed by the State government under the Charter in his attempt to organize the State government along the lines of this "People's Constitution" on 3 May 1842)]	**29 December 1841** [ratified by the Town Meetings]
	2nd	**1843--**	**5 November 1842** [This was the so-called "Freeman's Constitution": originally adopted by a Convention called by the legislature (in an attempt to answer the "People's Constitution"), it was rejected by the Town Meetings, 23 March 1842. The Convention reconvened, 12 September 1842 and drafted a modified version of the "Freeman's Constitution" that now incorporated at least some of the features of the "People's Constitution" ratified in December 1841]	**23 November 1842** [ratified by the Town Meetings; effective, 2 May 1843]
South Carolina	**The 8th state**, Ratified Constitution of the United States, 23 May 1788			
	Enabling Act *(of the Congress of the United States)*: [None. One of the 13 original States which declared their independence from the nascent British Empire on 4 July 1776]			
	1st	1776-1778	26 March 1776 *[adopted by Provincial Congress (='de facto' legislature)]*	26 March 1776 *[not submitted to the People]*
	2nd	1778-1790	19 March 1778 *[drafted and enacted by the General Assembly]*	19 March 1778 *[not submitted to the People; effective, November 1778]*
	3rd	1790-1865	3 June 1790	3 June 1790 *[not submitted to the People]*
	4th	1865-1868	27 September 1865 *[Convention convened, 13 September 1865]*	27 September 1865 *[not submitted to the People]*
	5th	1868-1895	17 March 1868 *[Convention convened, 14 January 1868]*	16 April 1868 *[ratified by a vote of 70,558 to 27,288]*
	6th	**1896--**	**4 December 1895**	**4 December 1895**

			[Convention convened, 10 September 1895]	[not submitted to the People; effective, 1 January 1896]
South Dakota	**The 39th state**, Admitted to the Union as a State, 2 November 1889 [upon Proclamation by President Benjamin Harrison]			
	Enabling Act *(of the Congress of the United States)*: 22 February 1889 [authorizing formation of a State government and Admission thereafter]			
	1st	**1889--**	**1889** [Convention convened, 4 July 1889]	**1 October 1889** [ratified by a vote of 70,131 to 3,267; effective upon Admission, 2 November 1889. (A separate vote on Article 24- prohibiting the manufacture, sale and importation of intoxicating beverages- approved this provision by a vote of 40,324 to 34,590; a separate vote on Article 25- providing for minority [that is, proportional] representation in the legislature- rejected this provision by a vote of 46,200 to 24,161)]
Tennessee	**The 16th state**, Admitted to the Union as a State, 1 June 1796 [by an Act of Congress recognizing a State government already formed]			
	Enabling Act: [Tennessee never had an Enabling Act prior to its Admission as a State]			
	1st	1796-1835	6 February 1796 *[Convention convened, 11 January 1796]*	6 February 1796 *[not submitted to the People; effective upon Admission, 1 June 1796]*
	2nd	1835-1870	30 August 1834 *[Convention convened, 19 May 1834]*	6 March 1835 *[ratified by a vote of 42,666 to 17,691]*
	3rd	**1870--**	**23 February 1870** [Convention convened, 10 January 1870]	**26 March 1870** [ratified by a vote of 98,128 to 33,872]
Texas	**The 28th state**, Admitted to the Union as a State, 29 December 1845 [by a Joint Resolution of Congress]			
	Enabling Act *(of the Congress of the United States)*: 1 March 1845 [The act of this date annexing the Republic of Texas to the United States functioned as an equivalent to an Enabling Act authorizing formation of a State government and Admission thereafter; the annexation was formally accepted by the Republic of Texas on 4 July 1845]			
	1st	1836-1845	17 March 1836 *[This was the Constitution of the REPUBLIC of Texas, framed by a Convention which convened on 1 March 1836, formally declared independence from Mexico on 2 March, adopted an "Executive Ordinance" to provide for a provisional government for the Republic and then drafted this Constitution]*	17 March 1836 *[not submitted to the People]*
	2nd	1845-1866	27 August 1845 *[Convention convened, 4 July 1845]*	13 October 1845 *[ratified by a vote of 4,174 to 312; effective upon Admission, 29 December 1845]*
	3rd	1866-1869	2 April 1866 *[Convention convened, March 1866]*	25 June 1866 *[ratified by a vote of 34,794 to 11,235]*

	4th	1869-1876	December 1868 *[Convention convened, 1 June 1868]*	3 December 1869 *[ratified by a vote of 72,395 to 4,924]*
	5th	**1876--**	**24 November 1875** [Convention convened, 6 September 1875]	**17 February 1876**
Utah	**The 45th state**, Admitted to the Union as a State, 4 January 1896 [upon Proclamation by President Grover Cleveland]			
	Enabling Act *(of the Congress of the United States)*: 16 July 1894 [authorizing formation of a State government and Admission thereafter]			
	1st	**1896--**	**8 May 1895** [Convention convened, 4 March 1895]	**5 November 1895** [effective upon Admission, 4 January 1896]
Vermont	**The 14th state**, Admitted to the Union as a State, 4 March 1791 [by an Act of Congress of 18 February 1791 recognizing a State government already formed]			
	Enabling Act: [Vermont never had an Enabling Act prior to Statehood]			
	1st	1777-1786	8 July 1777 *[Convention convened, 2 July 1777]*	March 1778 *[not submitted to the People: accepted by the General Assembly on this date]*
	2nd	1786-1793	4 July 1786 *[Convention convened, 29 June 1786]*	March 1787 *[not submitted to the People: accepted by the General Assembly on this date]*
	3rd	**1793--**	**9 July 1793** [Convention convened, 3 July 1793]	**1793** [not submitted to the People]
Virginia	**The 10th state**, Ratified Constitution of the United States, 25 June 1788			
	Enabling Act *(of the Congress of the United States)*: [None. One of the 13 original States which declared their independence from the nascent British Empire on 4 July 1776]			
	1st	1776-1830	29 June 1776 *[Convention convened, 6 May 1776. (Declaration of Rights adopted 12 June 1776)]*	29 June 1776 *[not submitted to the People]*
	2nd	1830-1851	14 January 1830 *[Convention convened, 5 October 1829]*	1830 *[ratified by vote of 26,055 to 15,563]*
	3rd	1851-1864	1 August 1851 *[Convention convened, 14 October 1850]*	23 October 1851 *[ratified by vote of 67,562 to 9,938]*
	4th	1864-1870	11 April 1864 *[Convention convened, 13 February 1864]*	11 April 1864 *[not submitted to the People]*
	5th	1870-1902	7 April 1868 *[Convention convened, July 1867]*	6 July 1869 *[ratified by vote of 210,585 to 9,136; effective, 1870]*
	6th	1902-1971	26 June 1902 *[Convention convened, 12 June 1902]*	26 June 1902 *[not submitted to the People; effective, 10 July 1902]*
	7th	**1971--**	**1970** [drafted by the General Assembly in 1969; enacted by the General Assembly and submitted to the People on the above date]	**1970** [effective, 1 July 1971]

Washington	**The 42nd state**, Admitted to the Union as a State, 11 November 1889 [upon Proclamation by President Benjamin Harrison]			
	Enabling Act *(of the Congress of the United States)*: 22 February 1889 [authorizing formation of a State government and Admission thereafter]			
	1st	**1889--**	**22 August 1889** [Convention convened, 4 July 1889]	**1 October 1889** [ratified by vote of 40,152 to 11,879; effective upon Admission, 11 November 1889]
West Virginia	**The 35th state**, Admitted to the Union as a State, 20 June 1863 [through Proclamation by President Abraham Lincoln on 20 April 1863 that the conditions set forth in the Enabling Act had been satisfactorily met]			
	Enabling Act *(of the Congress of the United States)*: 31 December 1862 [recognizing a State government already formed with Admission pending the meeting of specific conditions set by this Enabling Act]			
	1st	1863-1872	18 February 1862 *[Convention convened, 26 November 1861]*	3 April 1862 *[ratified by vote of 28,321 to 572; effective upon Admission, 20 June 1863]*
	2nd	**1872--**	**9 April 1872** [Convention convened, 16 January 1872]	**22 August 1872**
Wisconsin	**The 30th state**, Admitted to the Union as a State, 29 May 1848 [by an Act of Congress]			
	Enabling Act *(of the Congress of the United States)*: 6 August 1846 [authorizing formation of a State government and Admission thereafter]			
	1st	**1848--**	**1 February 1848** [Convention convened, 15 December 1847 (this was the second attempt to draft a State Constitution: a Convention, which had convened on 5 October 1846, adopted a Constitution which prohibited banks from operating within the State on 16 December 1846; this document was ultimately rejected, thus delaying Statehood for Wisconsin)]	**13 March 1848** [ratified by a vote of 16,442 to 6,149; effective upon Admission, 29 May 1848 (the anti-banking Constitution framed by the 1846 Convention had been rejected by the People in April 1847)]
Wyoming	**The 44th state**, Admitted to the Union as a State, 10 July 1890 [by an Act of Congress recognizing a State government already formed]			
	Enabling Act: [Wyoming never had an Enabling Act prior to Admission as a State]			
	1st	**1890--**	**30 September 1889** [Convention convened, 2 September 1889]	**5 November 1889** [ratified by a vote of 6,272 to 1,923; effective upon Admission, 10 July 1890]

Since its adoption in 1968, the Constitution of 1968 has been amended 105 times. The Legislature has proposed 73 of these amendments. Twenty-one amendments were proposed by citizen initiatives. Eight amendments were proposed by the Constitution Revision Commission. Three amendments were proposed by the Taxation and Budget Reform Commission. This document shows additions or changes made to the State Constitution. The color highlighting a particular addition or change, as described below, shows what method was used to propose a change to the voters. Provisions removed from the State Constitution are not shown.

Green:	Legislature
Yellow:	1998 Constitution Revision Commission
Blue:	1992 Taxation and Budget Reform Commission
Grey:	Citizen Initiative
Clear:	Original language of the Constitution of 1968 and Art. V adopted in 1972

Preamble

We, the people of the State of Florida, being grateful to Almighty God for our constitutional liberty, in order to secure its benefits, perfect our government, insure domestic tranquility, maintain public order, and guarantee equal civil and political rights to all, do ordain and establish this constitution.

Article I. Declaration of Rights

§ 1. Political power

All political power is inherent in the people. The enunciation herein of certain rights shall not be construed to deny or impair others retained by the people.

§ 2. Basic rights

All natural persons, female and male alike, are equal before the law and have inalienable rights, among which are the right to enjoy and defend life and liberty, to pursue happiness, to be rewarded for industry, and to acquire, possess and protect property; except that the ownership, inheritance, disposition and possession of real property by aliens ineligible for citizenship may be regulated or prohibited by law. No person shall be deprive d of any right because of race, religion, national origin, or physical disability.

§ 3. Religious freedom

There shall be no law respecting the establishment of religion or prohibiting or penalizing the free exercise thereof. Religious freedom shall not justify practices inconsistent with public morals, peace or safety. No revenue of the state or any political subdivision or agency thereof shall ever be taken from the public treasury directly or indirectly in aid of any church, sect, or religious denomination or in aid of any sectarian institution.

§ 4. Freedom of speech and press

Every person may speak, write and publish sentiments on all subjects but shall be responsible for the abuse of that right. No law shall be passed to restrain or abridge the liberty of speech or of the press. In all criminal prosecutions and civil actions for defamation the truth may be given in evidence. If the matter charged as defamatory is true and was published with good motives, the party shall be acquitted or exonerated.

§ 5. Right to assemble

The people shall have the right peaceably to assemble, to instruct their representatives, and to petition for redress of grievances.

§ 6. Right to work

The right of persons to work shall not be denied or abridged on account of membership or non-membership in any labor union or labor organization. The right of employees, by and through a labor organization, to bargain collectively shall not be denied or abridged. Public employees shall not have the right to strike.

§ 7. Military power

The military power shall be subordinate to the civil.

§ 8. Right to bear arms

(a) The right of the people to keep and bear arms in defense of themselves and of the lawful authority of the state shall not be infringed, except that the manner of bearing arms may be regulated by law.

(b) There shall be a mandatory period of three days, excluding weekends and legal holidays, between the purchase and delivery at retail of any handgun. For the purposes of this section, "purchase" means the transfer of money or other valuable consideration to the retailer, and "handgun" means a firearm capable of being carried and used by one hand, such as a pistol or revolver. Holders of a concealed weapon permit as prescribed in Florida law shall not be subject to the provisions of this paragraph.

(c) The legislature shall enact legislation implementing subsection (b) of this section, effective no later than December 31, 1991, which shall provide that anyone violating the provisions of subsection (b) shall be guilty of a felony.

(d) This restriction shall not apply to a trade in of another handgun.

§ 9. Due process

No person shall be deprived of life, liberty or property without due process of law, or be twice put in jeopardy for the same offense, or be compelled in any criminal matter to be a witness against oneself.

§ 10. Prohibited laws

No bill of attainder, ex post facto law or law impairing the obligation of contracts shall be passed.

§ 11. Imprisonment for debt

No person shall be imprisoned for debt, except in cases of fraud.

§ 12. Searches and seizures

The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures, and against the unreasonable interception of private communications by any means, shall not be violated. No warrant shall be issued except upon probable cause, supported by affidavit, particularly describing the place or places to be searched, the person or persons, thing or things to be seized, the communication to be intercepted, and the nature of evidence to be obtained. This right shall be construed in conformity with the 4th Amendment to the United States Constitution, as interpreted by the United States Supreme Court. Articles or information obtained in violation of this right shall not be admissible in evidence if such articles or information would be inadmissible under decisions of the United States Supreme Court construing the 4th Amendment to the United States Constitution.

§ 13. Habeas corpus

The writ of habeas corpus shall be grantable of right, freely and without cost. It shall be returnable without delay, and shall never be suspended unless, in case of rebellion or invasion, suspension is essential to the public safety.

§ 14. Pretrial release and detention

Unless charged with a capital offense or an offense punishable by life imprisonment and the proof of guilt is evident or the presumption is great, every person charged with a crime or violation of municipal or county ordinance shall be entitled to pretrial release on reasonable conditions. If no conditions of release can reasonably protect the community from risk of physical harm to persons, assure the presence of the accused at trial, or assure the integrity of the judicial process, the accused may be detained.

§ 15. Prosecution for crime; offenses committed by children

(a) No person shall be tried for capital crime without presentment or indictment by a grand jury, or for other felony without such presentment or indictment or an information under oath filed by the prosecuting officer of the court, except persons on active duty in the militia when tried by courts martial.

(b) When authorized by law, a child as therein defined may be charged with a violation of law as an act of delinquency instead of crime and tried without a jury or other requirements applicable to criminal cases. Any child so charged shall, upon demand made as provided by law before a trial in a juvenile proceeding, be tried in an appropriate court as an adult. A child found delinquent shall be disciplined as provided by law.

§ 16. Rights of accused and of victims

(a) In all criminal prosecutions the accused shall, upon demand, be informed of the nature and cause of the accusation, and shall be furnished a copy of the charges, and shall have the right to have compulsory process for witnesses, to confront at trial adverse witnesses, to be heard in person, by counsel or both, and to have a speedy and public trial by impartial jury in the county where the crime was committed. If the county is not known, the indictment or information may charge venue in two or more counties conjunctively and proof that the crime was committed in that area shall be sufficient; but before pleading the accused may elect in which of those counties the trial will take place. Venue for prosecution of crimes committed beyond the boundaries of the state shall be fixed by law.

(b) Victims of crime or their lawful representatives, including the next of kin of homicide victims, are entitled to the right to be informed, to be present, and to be heard when relevant, at all crucial stages of criminal proceedings, to the extent that these rights do not interfere with the constitutional rights of the accused.

§ 17. Excessive punishments

Excessive fines, cruel and unusual punishment, attainder, forfeiture of estate, indefinite imprisonment, and unreasonable detention of witnesses are forbidden. The death penalty is an authorized punishment for capital crimes designated by the legislature. The prohibition against cruel or unusual punishment, and the prohibition against cruel and unusual punishment, shall be construed in conformity with decisions of the United States Supreme Court which interpret the prohibition against cruel and unusual punishment provided in the Eighth Amendment to the United States Constitution. Any method of execution shall be allowed, unless prohibited by the United States Constitution. Methods of execution may be designated by the legislature, and a change in any method of execution may be applied retroactively. A sentence of death shall not be reduced on the basis that a method of execution is invalid. In any case in which an execution method is declared invalid, the death sentence shall remain in force until the sentence can be lawfully executed by any valid method. This section shall apply retroactively.

§ 18. Administrative penalties

No administrative agency, except the Department of Military Affairs in an appropriately convened court-martial action as provided by law, shall impose a sentence of imprisonment, nor shall it impose any other penalty except as provided by law.

§ 19. Costs

No person charged with crime shall be compelled to pay costs before a judgment of conviction has become final.

§ 20. Treason

Treason against the state shall consist only in levying war against it, adhering to its enemies, or giving them aid and comfort, and no person shall be convicted of treason except on the testimony of two witnesses to the same overt act or on confession in open court.

§ 21. Access to courts

The courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay.

§ 22. Trial by jury

The right of trial by jury shall be secure to all and remain inviolate. The qualifications and the number of jurors, not fewer than six, shall be fixed by law.

§ 23. Right of privacy

Every natural person has the right to be let alone and free from governmental intrusion into the person's private life except as otherwise provided herein. This section shall not be construed to limit the public's right of access to public records and meetings as provided by law.

§ 24. Access to public records and meetings

(a) Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

(b) All meetings of any collegial public body of the executive branch of state government or of any collegial public body of a county, municipality, school district, or special district, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, shall be open and noticed to the public and meetings of the legislature shall be open and noticed as provided in Article III, Section 4(e), except with respect to meetings exempted pursuant to this section or specifically closed by this Constitution.

(c) This section shall be self-executing. The legislature, however, may provide by general law passed by a two-thirds vote of each house for the exemption of records from the requirements of subsection (a) and the exemption of meetings from the requirements of subsection (b), provided that such law shall state with specificity the public necessity justifying the exemption and shall be no broader than necessary to accomplish the stated purpose of the law. The legislature shall enact laws governing the enforcement of this section, including the maintenance, control, destruction, disposal, and disposition of records made public by this section, except that each house of the legislature may adopt rules governing the enforcement of this section in relation to records of the legislative branch. Laws enacted pursuant to this subsection shall contain only exemptions from the requirements of subsections (a) or (b) and provisions governing the enforcement of this section, and shall relate to one subject.

(d) All laws that are in effect on July 1, 1993 that limit public access to records or meetings shall remain in force, and such laws apply to records of the legislative and judicial branches, until they are repealed. Rules of court that are in effect on the date of adoption of this section that limit access to records shall remain in effect until they are repealed.

§ 25. Taxpayers' Bill of Rights

By general law the legislature shall prescribe and adopt a Taxpayers' Bill of Rights that, in clear and concise language, sets forth taxpayers' rights and responsibilities and government's responsibilities to deal fairly with taxpayers under the laws of this state. This section shall be effective July 1, 1993.

§ 26. Claimant's right to fair compensation

(a) Article I, Section 26 is created to read "Claimant's right to fair compensation." In any medical liability claim involving a contingency fee, the claimant is entitled to receive no less than 70% of the first $250,000.00 in all damages received by the claimant, exclusive of reasonable and customary costs, whether received by judgment, settlement, or otherwise, and regardless of the number of defendants. The claimant is entitled to 90% of all damages in excess of $250,000.00, exclusive of reasonable and customary costs and regardless of the number of defendants. This provision is self-executing and does not require implementing legislation.

(b) This Amendment shall take effect on the day following approval by the voters.

Article II. General Provisions

§ 1. State boundaries

(a) The state boundaries are: Begin at the mouth of the Perdido River, which for the purposes of this description is defined as the point where latitude 30° 16'53" north and longitude 87° 31'06" west intersect; thence to the point where latitude 30° 17'02" north and longitude 87° 31'06" west intersect; thence to the point where latitude 30° 18'00" north and longitude 87° 27'08" west intersect; thence to the point where the center line of the Intracoastal Canal (as the same existed on June 12, 1953) and longitude 87° 27'00" west intersect; the same being in the middle of the Perdido River; thence up the middle of the Perdido River to the point where it intersects the south boundary of the State of Alabama, being also the point of intersection of the middle of the Perdido River with latitude 31° 00'00" north; thence east, along the south boundary line of the State of Alabama, the same being latitude 31° 00'00" north to the middle of the Chattahoochee River; thence down the middle of said river to its confluence with the Flint River; thence in a straight line to the head of the St. Marys River; thence down the middle of said river to the Atlantic Ocean; thence due east to the edge of the Gulf Stream or a distance of three geographic miles whichever is the greater distance; thence in a southerly direction along the edge of the Gulf Stream or along a line three geographic miles from the Atlantic coastline and three leagues distant from the Gulf of Mexico coastline, whichever is greater, to and through the Straits of Florida and westerly, including the Florida reefs, to a point due south of and three leagues from the southernmost point of the Marquesas Keys; thence westerly along a straight line to a point due south of and three leagues from Loggerhead Key, the westernmost of the Dry Tortugas Islands; thence westerly, northerly and easterly along the arc of a curve three leagues distant from Loggerhead Key to a point due north of Loggerhead Key; thence northeast along a straight line to a point three leagues from the coastline of Florida; thence northerly and westerly three leagues distant from the coastline to a point west of the mouth of the Perdido River three leagues from the coastline as measured on a line bearing south 0° 01'00" west from the point of beginning; thence northerly along said line to the point of beginning. The State of Florida shall also include any additional territory within the United States adjacent to the Peninsula of Florida lying south of the St. Marys River, east of the Perdido River, and south of the States of Alabama and Georgia.

(b) The coastal boundaries may be extended by statute to the limits permitted by the laws of the United States or international law.

§ 2. Seat of government

The seat of government shall be the City of Tallahassee, in Leon County, where the offices of the governor, lieutenant governor, cabinet members and the supreme court shall be maintained and the sessions of the legislature shall be held; provided that, in time of invasion or grave emergency, the governor by proclamation may for the period of the emergency transfer the seat of government to another place.

§ 3. Branches of government

The powers of the state government shall be divided into legislative, executive and judicial branches. No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein.

§ 4. State seal and flag

The design of the great seal and flag of the state shall be prescribed by law.

§ 5. Public officers

(a) No person holding any office of emolument under any foreign government, or civil office of emolument under the United States or any other state, shall hold any office of honor or of emolument under the government of this state. No person shall hold at the same time more than one office under the government of the state and the counties and municipalities therein, except that a notary public or military officer may hold another office, and any officer may be a member of a constitution revision commission, taxation and budget reform commission, constitutional convention, or statutory body having only advisory powers.

(b) Each state and county officer, before entering upon the duties of the office, shall give bond as required by law, and shall swear or affirm:

"I do solemnly swear (or affirm) that I will support, protect, and defend the Constitution and Government of the United States and of the State of Florida; that I am duly qualified to hold office

under the Constitution of the state; and that I will well and faithfully perform the duties of (title of office) on which I am now about to enter. So help me God.",

and thereafter shall devote personal attention to the duties of the office, and continue in office until a successor qualifies.

(c) The powers, duties, compensation and method of payment of state and county officers shall be fixed by law.

§ 6. Enemy attack

In periods of emergency resulting from enemy attack the legislature shall have power to provide for prompt and temporary succession to the powers and duties of all public offices the incumbents of which may become unavailable to execute the functions of their offices, and to adopt such other measures as may be necessary and appropriate to insure the continuity of governmental operations during the emergency. In exercising these powers, the legislature may depart from other requirements of this constitution, but only to the extent necessary to meet the emergency.

§ 7. Natural resources and scenic beauty

(a) It shall be the policy of the state to conserve and protect its natural resources and scenic beauty. Adequate provision shall be made by law for the abatement of air and water pollution and of excessive and unnecessary noise and for the conservation and protection of natural resources.

(b) Those in the Everglades Agricultural Area who cause water pollution within the Everglades Protection Area or the Everglades Agricultural Area shall be primarily responsible for paying the costs of the abatement of that pollution. For the purposes of this subsection, the terms "Everglades Protection Area" and "Everglades Agricultural Area" shall have the meanings as defined in statutes in effect on January 1, 1996.

§ 8. Ethics in government

A public office is a public trust. The people shall have the right to secure and sustain that trust against abuse. To assure this right:

(a) All elected constitutional officers and candidates for such offices and, as may be determined by law, other public officers, candidates, and employees shall file full and public disclosure of their financial interests.

(b) All elected public officers and candidates for such offices shall file full and public disclosure of their campaign finances.

(c) Any public officer or employee who breaches the public trust for private gain and any person or entity inducing such breach shall be liable to the state for all financial benefits obtained by such actions. The manner of recovery and additional damages may be provided by law.

(d) Any public officer or employee who is convicted of a felony involving a breach of public trust shall be subject to forfeiture of rights and privileges under a public retirement system or pension plan in such manner as may be provided by law.

(e) No member of the legislature or statewide elected officer shall personally represent another person or entity for compensation before the government body or agency of which the individual was an officer or member for a period of two years following vacation of office. No member of the legislature shall personally represent another person or entity for compensation during term of office before any state agency other than judicial tribunals. Similar restrictions on other public officers and employees may be established by law.

(f) There shall be an independent commission to conduct investigations and make public reports on all complaints concerning breach of public trust by public officers or employees not within the jurisdiction of the judicial qualifications commission.

(g) A code of ethics for all state employees and nonjudicial officers prohibiting conflict between public duty and private interests shall be prescribed by law.

(h) This section shall not be construed to limit disclosures and prohibitions which may be established by law to preserve the public trust and avoid conflicts between public duties and private interests.

(i) Schedule--On the effective date of this amendment and until changed by law:

(1) Full and public disclosure of financial interests shall mean filing with the custodian of state records by July 1 of each year a sworn statement showing net worth and identifying each asset and liability in excess of $1,000 and its value together with one of the following:

a. A copy of the person's most recent federal income tax return; or

b. A sworn statement which identifies each separate source and amount of income which exceeds $1,000. The forms for such source disclosure and the rules under which they are to be filed shall be prescribed by the independent commission established in subsection (f), and such rules shall include disclosure of secondary sources of income.

(2) Persons holding statewide elective offices shall also file disclosure of their financial interests pursuant to subsection (i)(1).
(3) The independent commission provided for in subsection (f) shall mean the Florida Commission on Ethics.

§ 9. English is the official language of Florida

(a) English is the official language of the State of Florida.
(b) The legislature shall have the power to enforce this section by appropriate legislation.

Article III. Legislature

§ 1. Composition

The legislative power of the state shall be vested in a legislature of the State of Florida, consisting of a senate composed of one senator elected from each senatorial district and a house of representatives composed of one member elected from each representative district.

§ 2. Members; officers

Each house shall be the sole judge of the qualifications, elections, and returns of its members, and shall biennially choose its officers, including a permanent presiding officer selected from its membership, who shall be designated in the senate as President of the Senate, and in the house as Speaker of the House of Representatives. The senate shall designate a Secretary to serve at its pleasure, and the house of representatives shall designate a Clerk to serve at its pleasure. The legislature shall appoint an auditor to serve at its pleasure who shall audit public records and perform related duties as prescribed by law or concurrent resolution.

§ 3. Sessions of the legislature

(a) Organization sessions.--On the fourteenth day following each general election the legislature shall convene for the exclusive purpose of organization and selection of officers.
(b) Regular sessions. A regular session of the legislature shall convene on the first Tuesday after the first Monday in March of each odd-numbered year, and on the first Tuesday after the first Monday in March, or such other date as may be fixed by law, of each even-numbered year.
(c) Special sessions.
(1) The governor, by proclamation stating the purpose, may convene the legislature in special session during which only such legislative business may be transacted as is within the purview of the proclamation, or of a communication from the governor, or is introduced by consent of two-thirds of the membership of each house.
(2) A special session of the legislature may be convened as provided by law.
(d) Length of sessions. A regular session of the legislature shall not exceed sixty consecutive days, and a special session shall not exceed twenty consecutive days, unless extended beyond such limit by a three-fifths vote of each house. During such an extension no new business may be taken up in either house without the consent of two-thirds of its membership.
(e) Adjournment. Neither house shall adjourn for more than seventy-two consecutive hours except pursuant to concurrent resolution.
(f) Adjournment by Governor. If, during any regular or special session, the two houses cannot agree upon a time for adjournment, the governor may adjourn the session sine die or to any date within the period authorized for such session; provided that, at least twenty-four hours before adjourning the session, and while neither house is in recess, each house shall be given formal written notice of the governor' s intention to do so, and agreement reached within that period by both houses on a time for adjournment shall prevail.

§ 4. Quorum and procedure

(a) A majority of the membership of each house shall constitute a quorum, but a smaller number may adjourn from day to day and compel the presence of absent members in such manner and under such penalties as it may prescribe. Each house shall determine its rules of procedure.
(b) Sessions of each house shall be public; except sessions of the senate when considering appointment to or removal from public office may be closed.
(c) Each house shall keep and publish a journal of its proceedings; and upon the request of five members present, the vote of each member voting on any question shall be entered on the journal. In any legislative committee or subcommittee, the vote of each member voting on the final passage of any legislation pending before the committee, and upon the request of any two members of the committee or subcommittee, the vote of each member on any other question, shall be recorded.
(d) Each house may punish a member for contempt or disorderly conduct and, by a two-thirds vote of its membership, may expel a member.
(e) The rules of procedure of each house shall provide that all legislative committee and subcommittee meetings of each house, and joint conference committee meetings, shall be open and noticed to the public. The rules of procedure of each house shall further provide that all prearranged gatherings, between more than two members of the legislature, or between the governor, the president of the senate, or the speaker of the house of representatives, the purpose of which is to agree upon formal legislative action that will be taken at a subsequent time, or at which formal legislative action is taken, regarding pending legislation or amendments, shall be reasonably open to the

public. All open meetings shall be subject to order and decorum. This section shall be implemented and defined by the rules of each house, and such rules shall control admission to the floor of each legislative chamber and may, where reasonably necessary for security purposes or to protect a witness appearing before a committee, provide for the closure of committee meetings. Each house shall be the sole judge for the interpretation, implementation, and enforcement of this section.

§ 5. Investigations; witnesses

Each house, when in session, may compel attendance of witnesses and production of documents and other evidence upon any matter under investigation before it or any of its committees, and may punish by fine not exceeding one thousand dollars or imprisonment not exceeding ninety days, or both, any person not a member who has been guilty of disorderly or contemptuous conduct in its presence or has refused to obey its lawful summons or to answer lawful questions. Such powers, except the power to punish, may be conferred by law upon committees when the legislature is not in session. Punishment of contempt of an interim legislative committee shall be by judicial proceedings as prescribed by law.

§ 6. Laws

Every law shall embrace but one subject and matter properly connected therewith, and the subject shall be briefly expressed in the title. No law shall be revised or amended by reference to its title only. Laws to revise or amend shall set out in full the revised or amended act, section, subsection or paragraph of a subsection. The enacting clause of every law shall read: "Be It Enacted by the Legislature of the State of Florida:".

§ 7. Passage of bills

Any bill may originate in either house and after passage in one may be amended in the other. It shall be read in each house on three separate days, unless this rule is waived by two-thirds vote; provided the publication of its title in the journal of a house shall satisfy the requirement for the first reading in that house. On each reading, it shall be read by title only, unless one-third of the members present desire it read in full. On final passage, the vote of each member voting shall be entered on the journal. Passage of a bill shall require a majority vote in each house. Each bill and joint resolution passed in both houses shall be signed by the presiding officers of the respective houses and by the secretary of the senate and the clerk of the house of representatives during the session or as soon as practicable after its adjournment sine die.

§ 8. Executive approval and veto

(a) Every bill passed by the legislature shall be presented to the governor for approval and shall become a law if the governor approves and signs it, or fails to veto it within seven consecutive days after presentation. If during that period or on the seventh day the legislature adjourns sine die or takes a recess of more than thirty days, the governor shall have fifteen consecutive days from the date of presentation to act on the bill. In all cases except general appropriation bills, the veto shall extend to the entire bill. The governor may veto any specific appropriation in a general appropriation bill, but may not veto any qualification or restriction without also vetoing the appropriation to which it relates.

(b) When a bill or any specific appropriation of a general appropriation bill has been vetoed, the governor shall transmit signed objections thereto to the house in which the bill originated if in session. If that house is not in session, the governor shall file them with the custodian of state records, who shall lay them before that house at its next regular or special session, whichever occurs first, and they shall be entered on its journal. If the originating house votes to re-enact a vetoed measure, whether in a regular or special session, and the other house does not consider or fails to re-enact the vetoed measure, no further consideration by either house at any subsequent session may be taken. If a vetoed measure is presented at a special session and the originating house does not consider it, the measure will be available for consideration at any intervening special session and until the end of the next regular session.

(c) If each house shall, by a two-thirds vote, re-enact the bill or reinstate the vetoed specific appropriation of a general appropriation bill, the vote of each member voting shall be entered on the respective journals, and the bill shall become law or the specific appropriation reinstated, the veto notwithstanding.

§ 9. Effective date of laws

Each law shall take effect on the sixtieth day after adjournment sine die of the session of the legislature in which enacted or as otherwise provided therein. If the law is passed over the veto of the governor it shall take effect on the

sixtieth day after adjournment sine die of the session in which the veto is overridden, on a later date fixed in the law, or on a date fixed by resolution passed by both houses of the legislature.

§ 10. Special laws

No special law shall be passed unless notice of intention to seek enactment thereof has been published in the manner provided by general law. Such notice shall not be necessary when the law, except the provision for referendum, is conditioned to become effective only upon approval by vote of the electors of the area affected.

§ 11. Prohibited special laws

(a) There shall be no special law or general law of local application pertaining to:
(1) election, jurisdiction or duties of officers, except officers of municipalities, chartered counties, special districts or local governmental agencies;
(2) assessment or collection of taxes for state or county purposes, including extension of time therefor, relief of tax officers from due performance of their duties, and relief of their sureties from liability;
(3) rules of evidence in any court;
(4) punishment for crime;
(5) petit juries, including compensation of jurors, except establishment of jury commissions;
(6) change of civil or criminal venue;
(7) conditions precedent to bringing any civil or criminal proceedings, or limitations of time therefor;
(8) refund of money legally paid or remission of fines, penalties or forfeitures;
(9) creation, enforcement, extension or impairment of liens based on private contracts, or fixing of interest rates on private contracts;
(10) disposal of public property, including any interest therein, for private purposes;
(11) vacation of roads;
(12) private incorporation or grant of privilege to a private corporation;
(13) effectuation of invalid deeds, wills or other instruments, or change in the law of descent;
(14) change of name of any person;
(15) divorce;
(16) legitimation or adoption of persons;
(17) relief of minors from legal disabilities;
(18) transfer of any property interest of persons under legal disabilities or of estates of decedents;
(19) hunting or fresh water fishing;
(20) regulation of occupations which are regulated by a state agency; or
(21) any subject when prohibited by general law passed by a three-fifths vote of the membership of each house. Such law may be amended or repealed by like vote.
(b) In the enactment of general laws on other subjects, political subdivisions or other governmental entities may be classified only on a basis reasonably related to the subject of the law.

§ 12. Appropriation bills

Laws making appropriations for salaries of public officers and other current expenses of the state shall contain provisions on no other subject.

§ 13. Term of office

No office shall be created the term of which shall exceed four years except as provided herein.

§ 14. Civil service system

By law there shall be created a civil service system for state employees, except those expressly exempted, and there may be created civil service systems and boards for county, district or municipal employees and for such offices thereof as are not elected or appointed by the governor, and there may be authorized such boards as are necessary to prescribe the qualifications, method of selection and tenure of such employees and officers.

§ 15. Terms and qualifications of legislators

(a) Senators. Senators shall be elected for terms of four years, those from odd-numbered districts in the years the numbers of which are multiples of four and those from even-numbered districts in even-numbered years the

numbers of which are not multiples of four; except, at the election next following a reapportionment, some senators shall be elected for terms of two years when necessary to maintain staggered terms.

(b) Representatives. Members of the house of representatives shall be elected for terms of two years in each even-numbered year.

(c) Qualifications. Each legislator shall be at least twenty-one years of age, an elector and resident of the district from which elected and shall have resided in the state for a period of two years prior to election.

(d) Assuming office; vacancies. Members of the legislature shall take office upon election. Vacancies in legislative office shall be filled only by election as provided by law.

§ 16. Legislative apportionment

(a) Senatorial and representative districts.-- The legislature at its regular session in the second year following each decennial census, by joint resolution, shall apportion the state in accordance with the constitution of the state and of the United States into not less than thirty nor more than forty consecutively numbered senatorial districts of either contiguous, overlapping or identical territory, and into not less than eighty nor more than one hundred twenty consecutively numbered representative districts of either contiguous, overlapping or identical territory. Should that session adjourn without adopting such joint resolution, the governor by proclamation shall reconvene the legislature within thirty days in special apportionment session which shall not exceed thirty consecutive days, during which no other business shall be transacted, and it shall be the mandatory duty of the legislature to adopt a joint resolution of apportionment.

(b) Failure of legislature to apportion; judicial reapportionment.--In the event a special apportionment session of the legislature finally adjourns without adopting a joint resolution of apportionment, the attorney general shall, within five days, petition the supreme court of the state to make such apportionment. No later than the sixtieth day after the filing of such petition, the supreme court shall file with the custodian of state records an order making such apportionment.

(c) Judicial review of apportionment.--Within fifteen days after the passage of the joint resolution of apportionment, the attorney general shall petition the supreme court of the state for a declaratory judgment determining the validity of the apportionment. The supreme court, in accordance with its rules, shall permit adversary interests to present their views and, within thirty days from the filing of the petition, shall enter its judgment.

(d) Effect of judgment in apportionment; extraordinary apportionment session.--A judgment of the supreme court of the state determining the apportionment to be valid shall be binding upon all the citizens of the state. Should the supreme court determine that the apportionment made by the legislature is invalid, the governor by proclamation shall reconvene the legislature within five days thereafter in extraordinary apportionment session which shall not exceed fifteen days, during which the legislature shall adopt a joint resolution of apportionment conforming to the judgment of the supreme court.

(e) Extraordinary apportionment session; review of apportionment.--Within fifteen days after the adjournment of an extraordinary apportionment session, the attorney general shall file a petition in the supreme court of the state setting forth the apportionment resolution adopted by the legislature, or if none has been adopted reporting that fact to the court. Consideration of the validity of a joint resolution of apportionment shall be had as provided for in cases of such joint resolution adopted at a regular or special apportionment session.

(f) Judicial reapportionment.--Should an extraordinary apportionment session fail to adopt a resolution of apportionment or should the supreme court determine that the apportionment made is invalid, the court shall, not later than sixty days after receiving the petition of the attorney general, file with the custodian of state records an order making such apportionment.

§ 17. Impeachment

(a) The governor, lieutenant governor, members of the cabinet, justices of the supreme court, judges of district courts of appeal, judges of circuit courts, and judges of county courts shall be liable to impeachment for misdemeanor in office. The house of representatives by two-thirds vote shall have the power to impeach an officer. The speaker of the house of representatives shall have power at any time to appoint a committee to investigate charges against any officer subject to impeachment.

(b) An officer impeached by the house of representatives shall be disqualified from performing any official duties until acquitted by the senate, and, unless impeached, the governor may by appointment fill the office until completion of the trial.

(c) All impeachments by the house of representatives shall be tried by the senate. The chief justice of the supreme court, or another justice designated by the chief justice, shall preside at the trial, except in a trial of the chief justice, in which case the governor shall preside. The senate shall determine the time for the trial of any impeachment and may sit for the trial whether the house of representatives be in session or not. The time fixed for trial shall not be more than six months after the impeachment. During an impeachment trial senators shall be upon their oath or

affirmation. No officer shall be convicted without the concurrence of two-thirds of the members of the senate present. Judgment of conviction in cases of impeachment shall remove the offender from office and, in the discretion of the senate, may include disqualification to hold any office of honor, trust or profit. Conviction or acquittal shall not affect the civil or criminal responsibility of the officer.

§ 18. Conflict of interest

A code of ethics for all state employees and nonjudicial officers prohibiting conflict between public duty and private interests shall be prescribed by law.

§ 19. State Budgeting, Planning and Appropriations Processes

(a) Annual budgeting.--Effective July 1, 1994, general law shall prescribe the adoption of annual state budgetary and planning processes and require that detail reflecting the annualized costs of the state budget and reflecting the nonrecurring costs of the budget requests shall accompany state department and agency legislative budget requests, the governor's recommended budget, and appropriation bills. For purposes of this subsection, the terms department and agency shall include the judicial branch.

(b) Appropriation bills format.--Separate sections within the general appropriation bill shall be used for each major program area of the state budget; major program areas shall include: education enhancement "lottery" trust fund items; education (all other funds); human services; criminal justice and corrections; natural resources, environment, growth management, and transportation; general government; and judicial branch. Each major program area shall include an itemization of expenditures for: state operations; state capital outlay; aid to local governments and nonprofit organizations operations; aid to local governments and nonprofit organizations capital outlay; federal funds and the associated state matching funds; spending authorizations for operations; and spending authorizations for capital outlay. Additionally, appropriation bills passed by the legislature shall include an itemization of specific appropriations that exceed one million dollars ($1,000,000.00) in 1992 dollars. For purposes of this subsection, "specific appropriation," "itemization," and "major program area" shall be defined by law. This itemization threshold shall be adjusted by general law every four years to reflect the rate of inflation or deflation as indicated in the Consumer Price Index for All Urban Consumers, U.S. City Average, All Items, or successor reports as reported by the United States Department of Labor, Bureau of Labor Statistics or its successor. Substantive bills containing appropriations shall also be subject to the itemization requirement mandated under this provision and shall be subject to the governor's specific appropriation veto power described in Article III, Section 8. This subsection shall be effective July 1, 1994.

(c) Appropriations review process.--Effective July 1, 1993, general law shall prescribe requirements for each department and agency of state government to submit a planning document and supporting budget request for review by the appropriations committees of both houses of the legislature. The review shall include a comparison of the major issues in the planning document and budget requests to those major issues included in the governor's recommended budget. For purposes of this subsection, the terms department and agency shall include the judicial branch.

(d) Seventy-two hour public review period.--All general appropriation bills shall be furnished to each member of the legislature, each member of the cabinet, the governor, and the chief justice of the supreme court at least seventy-two hours before final passage by either house of the legislature of the bill in the form that will be presented to the governor.

(e) Final budget report.--Effective November 4, 1992, a final budget report shall be prepared as prescribed by general law. The final budget report shall be produced no later than the 90th day after the beginning of the fiscal year, and copies of the report shall be furnished to each member of the legislature, the head of each department and agency of the state, the auditor general, and the chief justice of the supreme court.

(f) Trust funds.--

(1) No trust fund of the State of Florida or other public body may be created by law without a three-fifths (3/5) vote of the membership of each house of the legislature in a separate bill for that purpose only.

(2) State trust funds in existence before the effective date of this subsection shall terminate not more than four years after the effective date of this subsection. State trust funds created after the effective date of this subsection shall terminate not more than four years after the effective date of the act authorizing the creation of the trust fund. By law the legislature may set a shorter time period for which any trust fund is authorized.

(3) Trust funds required by federal programs or mandates; trust funds established for bond covenants, indentures, or resolutions, whose revenues are legally pledged by the state or public body to meet debt service or other financial requirements of any debt obligations of the state or any public body; the state transportation trust fund; the trust fund containing the net annual proceeds from the Florida Education Lotteries; the Florida retirement trust fund; trust funds for institutions under the management of the Board of Regents, where such trust funds are for auxiliary enterprises and contracts, grants, and donations, as those terms are defined by general law; trust funds that serve as clearing funds or accounts for the chief financial officer or state agencies; trust funds that account for assets held by

the state in a trustee capacity as an agent or fiduciary for individuals, private organizations, or other governmental units; and other trust funds authorized by this Constitution, are not subject to the requirements set forth in paragraph (2) of this subsection.

(4) All cash balances and income of any trust funds abolished under this subsection shall be deposited into the general revenue fund.

(5) The provisions of this subsection shall be effective November 4, 1992.

(g) Budget stabilization fund.--Beginning with the 1994-1995 fiscal year, at least 1% of an amount equal to the last completed fiscal year's net revenue collections for the general revenue fund shall be retained in a budget stabilization fund. The budget stabilization fund shall be increased to at least 2% of said amount for the 1995-1996 fiscal year, at least 3% of said amount for the 1996-1997 fiscal year, at least 4% of said amount for the 1997- 1998 fiscal year, and at least 5% of said amount for the 1998-1999 fiscal year. Subject to the provisions of this subsection, the budget stabilization fund shall be maintained at an amount equal to at least 5% of the last completed fiscal year's net revenue collections for the general revenue fund. The budget stabilization fund's principal balance shall not exceed an amount equal to 10% of the last completed fiscal year's net revenue collections for the general revenue fund. The legislature shall provide criteria for withdrawing funds from the budget stabilization fund in a separate bill for that purpose only and only for the purpose of covering revenue shortfalls of the general revenue fund or for the purpose of providing funding for an emergency, as defined by general law. General law shall provide for the restoration of this fund. The budget stabilization fund shall be comprised of funds not otherwise obligated or committed for any purpose.

(h) State planning document and department and agency planning document processes.--The governor shall recommend to the legislature biennially any revisions to the state planning document, as defined by law. General law shall require a biennial review and revision of the state planning document, shall require the governor to report to the legislature on the progress in achieving the state planning document's goals, and shall require all departments and agencies of state government to develop planning documents consistent with the state planning document. The state planning document and department and agency planning documents shall remain subject to review and revision by the legislature. The department and agency planning documents shall include a prioritized listing of planned expenditures for review and possible reduction in the event of revenue shortfalls, as defined by general law. To ensure productivity and efficiency in the executive, legislative, and judicial branches, a quality management and accountability program shall be implemented by general law. For the purposes of this subsection, the terms department and agency shall include the judicial branch. This subsection shall be effective July 1, 1993.

Article IV. Executive

§ 1. Governor

(a) The supreme executive power shall be vested in a governor, who shall be commander-in-chief of all military forces of the state not in active service of the United States. The governor shall take care that the laws be faithfully executed, commission all officers of the state and counties, and transact all necessary business with the officers of government. The governor may require information in writing from all executive or administrative state, county or municipal officers upon any subject relating to the duties of their respective offices. The governor shall be the chief administrative officer of the state responsible for the planning and budgeting for the state.

(b) The governor may initiate judicial proceedings in the name of the state against any executive or administrative state, county or municipal officer to enforce compliance with any duty or restrain any unauthorized act.

(c) The governor may request in writing the opinion of the justices of the supreme court as to the interpretation of any portion of this constitution upon any question affecting the governor's executive powers and duties. The justices shall, subject to their rules of procedure, permit interested persons to be heard on the questions presented and shall render their written opinion not earlier than ten days from the filing and docketing of the request, unless in their judgment the delay would cause public injury.

(d) The governor shall have power to call out the militia to preserve the public peace, execute the laws of the state, suppress insurrection, or repel invasion.

(e) The governor shall by message at least once in each regular session inform the legislature concerning the condition of the state, propose such reorganization of the executive department as will promote efficiency and economy, and recommend measures in the public interest.

(f) When not otherwise provided for in this constitution, the governor shall fill by appointment any vacancy in state or county office for the remainder of the term of an appointive office, and for the remainder of the term of an elective office if less than twenty-eight months, otherwise until the first Tuesday after the first Monday following the next general election.

§ 2. Lieutenant governor

There shall be a lieutenant governor, who shall perform such duties pertaining to the office of governor as shall be assigned by the governor, except when otherwise provided by law, and such other duties as may be prescribed by law.

§ 3. Succession to office of governor; acting governor

(a) Upon vacancy in the office of governor, the lieutenant governor shall become governor. Further succession to the office of governor shall be prescribed by law. A successor shall serve for the remainder of the term.

(b) Upon impeachment of the governor and until completion of trial thereof, or during the governor's physical or mental incapacity, the lieutenant governor shall act as governor. Further succession as acting governor shall be prescribed by law. Incapacity to serve as governor may be determined by the supreme court upon due notice after docketing of a written suggestion thereof by three cabinet members, and in such case restoration of capacity shall be similarly determined after docketing of written suggestion thereof by the governor, the legislature or three cabinet members. Incapacity to serve as governor may also be established by certificate filed with the custodian of state records by the governor declaring incapacity for physical reasons to serve as governor, and in such case restoration of capacity shall be similarly established.

§ 4. Cabinet

(a) There shall be a cabinet composed of an attorney general, a chief financial officer, and a commissioner of agriculture. In addition to the powers and duties specified herein, they shall exercise such powers and perform such duties as may be prescribed by law. In the event of a tie vote of the governor and cabinet, the side on which the governor voted shall be deemed to prevail.

(b) The attorney general shall be the chief state legal officer. There is created in the office of the attorney general the position of statewide prosecutor. The statewide prosecutor shall have concurrent jurisdiction with the state attorneys to prosecute violations of criminal laws occurring or having occurred, in two or more judicial circuits as part of a related transaction, or when any such offense is affecting or has affected two or more judicial circuits as provided by general law. The statewide prosecutor shall be appointed by the attorney general from not less than three persons nominated by the judicial nominating commission for the supreme court, or as otherwise provided by general law.

(c) The chief financial officer shall serve as the chief fiscal officer of the state, and shall settle and approve accounts against the state, and shall keep all state funds and securities.

(d) The commissioner of agriculture shall have supervision of matters pertaining to agriculture except as otherwise provided by law.
(e) The governor as chair, the chief financial officer, and the attorney general shall constitute the state board of administration, which shall succeed to all the power, control, and authority of the state board of administration established pursuant to Article IX, Section 16 of the Constitution of 1885, and which shall continue as a body at least for the life of Article XII, Section 9(c).
(f) The governor as chair, the chief financial officer, the attorney general, and the commissioner of agriculture shall constitute the trustees of the internal improvement trust fund and the land acquisition trust fund as provided by law.
(g) The governor as chair, the chief financial officer, the attorney general, and the commissioner of agriculture shall constitute the agency head of the Department of Law Enforcement.

§ 5. Election of governor, lieutenant governor and cabinet members; qualifications; terms

(a) At a state-wide general election in each calendar year the number of which is even but not a multiple of four, the electors shall choose a governor and a lieutenant governor and members of the cabinet each for a term of four years beginning on the first Tuesday after the first Monday in January of the succeeding year. In primary elections, candidates for the office of governor may choose to run without a lieutenant governor candidate. In the general election, all candidates for the offices of governor and lieutenant governor shall form joint candidacies in a manner prescribed by law so that each voter shall cast a single vote for a candidate for governor and a candidate for lieutenant governor running together.
(b) When elected, the governor, lieutenant governor and each cabinet member must be an elector not less than thirty years of age who has resided in the state for the preceding seven years. The attorney general must have been a member of the bar of Florida for the preceding five years. No person who has, or but for resignation would have, served as governor or acting governor for more than six years in two consecutive terms shall be elected governor for the succeeding term.

§ 6. Executive departments

All functions of the executive branch of state government shall be allotted among not more than twenty-five departments, exclusive of those specifically provided for or authorized in this constitution. The administration of each department, unless otherwise provided in this constitution, shall be placed by law under the direct supervision of the governor, the lieutenant governor, the governor and cabinet, a cabinet member, or an officer or board appointed by and serving at the pleasure of the governor, except:
(a) When provided by law, confirmation by the senate or the approval of three members of the cabinet shall be required for appointment to or removal from any designated statutory office.
(b) Boards authorized to grant and revoke licenses to engage in regulated occupations shall be assigned to appropriate departments and their members appointed for fixed terms, subject to removal only for cause.

§ 7. Suspensions; filling office during suspensions

(a) By executive order stating the grounds and filed with the custodian of state records, the governor may suspend from office any state officer not subject to impeachment, any officer of the militia not in the active service of the United States, or any county officer, for malfeasance, misfeasance, neglect of duty, drunkenness, incompetence, permanent inability to perform official duties, or commission of a felony, and may fill the office by appointment for the period of suspension. The suspended officer may at any time before removal be reinstated by the governor.
(b) The senate may, in proceedings prescribed by law, remove from office or reinstate the suspended official and for such purpose the senate may be convened in special session by its president or by a majority of its membership.
(c) By order of the governor any elected municipal officer indicted for crime may be suspended from office until acquitted and the office filled by appointment for the period of suspension, not to extend beyond the term, unless these powers are vested elsewhere by law or the municipal charter.

§ 8. Clemency

(a) Except in cases of treason and in cases where impeachment results in conviction, the governor may, by executive order filed with the custodian of state records, suspend collection of fines and forfeitures, grant reprieves not exceeding sixty days and, with the approval of two members of the cabinet, grant full or conditional pardons, restore civil rights, commute punishment, and remit fines and forfeitures for offenses.
(b) In cases of treason the governor may grant reprieves until adjournment of the regular session of the legislature convening next after the conviction, at which session the legislature may grant a pardon or further reprieve; otherwise the sentence shall be executed.

(c) There may be created by law a parole and probation commission with power to supervise persons on probation and to grant paroles or conditional releases to persons under sentences for crime. The qualifications, method of selection and terms, not to exceed six years, of members of the commission shall be prescribed by law.

§ 9. Fish and wildlife conservation commission

There shall be a fish and wildlife conservation commission, composed of seven members appointed by the governor, subject to confirmation by the senate for staggered terms of five years. The commission shall exercise the regulatory and executive powers of the state with respect to wild animal life and fresh water aquatic life, and shall also exercise regulatory and executive powers of the state with respect to marine life, except that all license fees for taking wild animal life, fresh water aquatic life, and marine life and penalties for violating regulations of the commission shall be prescribed by general law. The commission shall establish procedures to ensure adequate due process in the exercise of its regulatory and executive functions. The legislature may enact laws in aid of the commission, not inconsistent with this section, except that there shall be no special law or general law of local application pertaining to hunting or fishing. The commission's exercise of executive powers in the area of planning, budgeting, personnel management, and purchasing shall be as provided by law. Revenue derived from license fees for the taking of wild animal life and fresh water aquatic life shall be appropriated to the commission by the legislature for the purposes of management, protection, and conservation of wild animal life and fresh water aquatic life. Revenue derived from license fees relating to marine life shall be appropriated by the legislature for the purposes of management, protection, and conservation of marine life as provided by law. The commission shall not be a unit of any other state agency and shall have its own staff, which includes management, research, and enforcement. Unless provided by general law, the commission shall have no authority to regulate matters relating to air and water pollution.

§ 10. Attorney General

Attorney General.--The attorney general shall, as directed by general law, request the opinion of the justices of the supreme court as to the validity of any initiative petition circulated pursuant to Section 3 of Article XI. The justices shall, subject to their rules of procedure, permit interested persons to be heard on the questions presented and shall render their written opinion no later than April 1 of the year in which the initiative is to be submitted to the voters pursuant to Section 5 of Article XI.

§ 11. Department of Veterans Affairs

The legislature, by general law, may provide for the establishment of the Department of Veterans Affairs.

§ 12. Department of Elderly Affairs

The legislature may create a Department of Elderly Affairs and prescribe its duties. The provisions governing the administration of the department must comply with Section 6 of Article IV of the State Constitution.

§ 13. Revenue Shortfalls

In the event of revenue shortfalls, as defined by general law, the governor and cabinet may establish all necessary reductions in the state budget in order to comply with the provisions of Article VII, Section 1(d). The governor and cabinet shall implement all necessary reductions for the executive budget, the chief justice of the supreme court shall implement all necessary reductions for the judicial budget, and the speaker of the house of representatives and the president of the senate shall implement all necessary reductions for the legislative budget. Budget reductions pursuant to this section shall be consistent with the provisions of Article III, Section 19(h).

Article V. Judiciary

§ 1. Courts

The judicial power shall be vested in a supreme court, district courts of appeal, circuit courts and county courts. No other courts may be established by the state, any political subdivision or any municipality. The legislature shall, by general law, divide the state into appellate court districts and judicial circuits following county lines. Commissions established by law, or administrative officers or bodies may be granted quasi-judicial power in matters connected with the functions of their offices. The legislature may establish by general law a civil traffic hearing officer system for the purpose of hearing civil traffic infractions. The legislature may, by general law, authorize a military court-martial to be conducted by military judges of the Florida National Guard, with direct appeal of a decision to the District Court of Appeal, First District.

§ 2. Administration; practice and procedure

(a) The supreme court shall adopt rules for the practice and procedure in all courts including the time for seeking appellate review, the administrative supervision of all courts, the transfer to the court having jurisdiction of any proceeding when the jurisdiction of another court has been improvidently invoked, and a requirement that no cause shall be dismissed because an improper remedy has been sought. The supreme court shall adopt rules to allow the court and the district courts of appeal to submit questions relating to military law to the federal Court of Appeals for the Armed Forces for an advisory opinion. Rules of court may be repealed by general law enacted by two-thirds vote of the membership of each house of the legislature.

(b) The chief justice of the supreme court shall be chosen by a majority of the members of the court; shall be the chief administrative officer of the judicial system; and shall have the power to assign justices or judges, including consenting retired justices or judges, to temporary duty in any court for which the judge is qualified and to delegate to a chief judge of a judicial circuit the power to assign judges for duty in that circuit.

(c) A chief judge for each district court of appeal shall be chosen by a majority of the judges thereof or, if there is no majority, by the chief justice. The chief judge shall be responsible for the administrative supervision of the court.

(d) A chief judge in each circuit shall be chosen from among the circuit judges as provided by supreme court rule. The chief judge shall be responsible for the administrative supervision of the circuit courts and county courts in his circuit.

§ 3. Supreme court

(a) Organization.--The supreme court shall consist of seven justices. Of the seven justices, each appellate district shall have at least one justice elected or appointed from the district to the supreme court who is a resident of the district at the time of the original appointment or election. Five justices shall constitute a quorum. The concurrence of four justices shall be necessary to a decision. When recusals for cause would prohibit the court from convening because of the requirements of this section, judges assigned to temporary duty may be substituted for justices.

(b) Jurisdiction.--The supreme court:

(1) Shall hear appeals from final judgments of trial courts imposing the death penalty and from decisions of district courts of appeal declaring invalid a state statute or a provision of the state constitution.

(2) When provided by general law, shall hear appeals from final judgments entered in proceedings for the validation of bonds or certificates of indebtedness and shall review action of statewide agencies relating to rates or service of utilities providing electric, gas, or telephone service.

(3) May review any decision of a district court of appeal that expressly declares valid a state statute, or that expressly construes a provision of the state or federal constitution, or that expressly affects a class of constitutional or state officers, or that expressly and directly conflicts with a decision of another district court of appeal or of the supreme court on the same question of law.

(4) May review any decision of a district court of appeal that passes upon a question certified by it to be of great public importance, or that is certified by it to be in direct conflict with a decision of another district court of appeal.

(5) May review any order or judgment of a trial court certified by the district court of appeal in which an appeal is pending to be of great public importance, or to have a great effect on the proper administration of justice throughout the state, and certified to require immediate resolution by the supreme court.

(6) May review a question of law certified by the Supreme Court of the United States or a United States Court of Appeals which is determinative of the cause and for which there is no controlling precedent of the supreme court of Florida.

(7) May issue writs of prohibition to courts and all writs necessary to the complete exercise of its jurisdiction.

(8) May issue writs of mandamus and quo warranto to state officers and state agencies.

(9) May, or any justice may, issue writs of habeas corpus returnable before the supreme court or any justice, a district court of appeal or any judge thereof, or any circuit judge.

(10) Shall, when requested by the attorney general pursuant to the provisions of Section 10 of Article IV, render an advisory opinion of the justices, addressing issues as provided by general law.

(c) Clerk and marshal.--The supreme court shall appoint a clerk and a marshal who shall hold office during the pleasure of the court and perform such duties as the court directs. Their compensation shall be fixed by general law. The marshal shall have the power to execute the process of the court throughout the state, and in any county may deputize the sheriff or a deputy sheriff for such purpose.

§ 4. District courts of appeal

(a) Organization.--There shall be a district court of appeal serving each appellate district. Each district court of appeal shall consist of at least three judges. Three judges shall consider each case and the concurrence of two shall be necessary to a decision.

(b) Jurisdiction.--

(1) District courts of appeal shall have jurisdiction to hear appeals, that may be taken as a matter of right, from final judgments or orders of trial courts, including those entered on review of administrative action, not directly appealable to the supreme court or a circuit court. They may review interlocutory orders in such cases to the extent provided by rules adopted by the supreme court.

(2) District courts of appeal shall have the power of direct review of administrative action, as prescribed by general law.

(3) A district court of appeal or any judge thereof may issue writs of habeas corpus returnable before the court or any judge thereof or before any circuit judge within the territorial jurisdiction of the court. A district court of appeal may issue writs of mandamus, certiorari, prohibition, quo warranto, and other writs necessary to the complete exercise of its jurisdiction. To the extent necessary to dispose of all issues in a cause properly before it, a district court of appeal may exercise any of the appellate jurisdiction of the circuit courts.

(c) Clerks and marshals.--Each district court of appeal shall appoint a clerk and a marshal who shall hold office during the pleasure of the court and perform such duties as the court directs. Their compensation shall be fixed by general law. The marshal shall have the power to execute the process of the court throughout the territorial jurisdiction of the court, and in any county may deputize the sheriff or a deputy sheriff for such purpose.

§ 5. Circuit courts

(a) Organization.--There shall be a circuit court serving each judicial circuit.

(b) Jurisdiction.--The circuit courts shall have original jurisdiction not vested in the county courts, and jurisdiction of appeals when provided by general law. They shall have the power to issue writs of mandamus, quo warranto, certiorari, prohibition and habeas corpus, and all writs necessary or proper to the complete exercise of their jurisdiction. Jurisdiction of the circuit court shall be uniform throughout the state. They shall have the power of direct review of administrative action prescribed by general law.

§ 6. County courts

(a) Organization.--There shall be a county court in each county. There shall be one or more judges for each county court as prescribed by general law.

(b) Jurisdiction.--The county courts shall exercise the jurisdiction prescribed by general law. Such jurisdiction shall be uniform throughout the state.

§ 7. Specialized divisions

All courts except the supreme court may sit in divisions as may be established by general law. A circuit or county court may hold civil and criminal trials and hearings in any place within the territorial jurisdiction of the court as designated by the chief judge of the circuit.

§ 8. Eligibility

No person shall be eligible for office of justice or judge of any court unless the person is an elector of the state and resides in the territorial jurisdiction of the court. No justice or judge shall serve after attaining the age of seventy years except upon temporary assignment or to complete a term, one-half of which has been served. No person is eligible for the office of justice of the supreme court or judge of a district court of appeal unless the person is, and has been for the preceding ten years, a member of the bar of Florida. No person is eligible for the office of circuit judge unless the person is, and has been for the preceding five years, a member of the bar of Florida. Unless otherwise provided by general law, no person is eligible for the office of county court judge unless the person is, and has been for the preceding five years, a member of the bar of Florida. Unless otherwise provided by general law, a

person shall be eligible for election or appointment to the office of county court judge in a county having a population of 40,000 or less if the person is a member in good standing of the bar of Florida.

§ 9. Determination of number of judges

The supreme court shall establish by rule uniform criteria for the determination of the need for additional judges except supreme court justices, the necessity for decreasing the number of judges and for increasing, decreasing or redefining appellate districts and judicial circuits. If the supreme court finds that a need exists for increasing or decreasing the number of judges or increasing, decreasing or redefining appellate districts and judicial circuits, it shall, prior to the next regular session of the legislature, certify to the legislature its findings and recommendations concerning such need. Upon receipt of such certificate, the legislature, at the next regular session, shall consider the findings and recommendations and may reject the recommendations or by law implement the recommendations in whole or in part; provided the legislature may create more judicial offices than are recommended by the supreme court or may decrease the number of judicial offices by a greater number than recommended by the court only upon a finding of two-thirds of the membership of both houses of the legislature, that such a need exists. A decrease in the number of judges shall be effective only after the expiration of a term. If the supreme court fails to make findings as provided above when need exists, the legislature may by concurrent resolution request the court to certify its findings and recommendations and upon the failure of the court to certify its findings for nine consecutive months, the legislature may, upon a finding of two-thirds of the membership of both houses of the legislature that a need exists, increase or decrease the number of judges or increase, decrease or redefine appellate districts and judicial circuits.

§ 10. Retention; election and terms

(a) Any justice or judge may qualify for retention by a vote of the electors in the general election next preceding the expiration of the justice's or judge's term in the manner prescribed by law. If a justice or judge is ineligible or fails to qualify for retention, a vacancy shall exist in that office upon the expiration of the term being served by the justice or judge. When a justice or judge so qualifies, the ballot shall read substantially as follows: "Shall Justice (or Judge) ...(name of justice or judge) ... of the ...(name of the court) ... be retained in office?" If a majority of the qualified electors voting within the territorial jurisdiction of the court vote to retain, the justice or judge shall be retained for a term of six years. The term of the justice or judge retained shall commence on the first Tuesday after the first Monday in January following the general election. If a majority of the qualified electors voting within the territorial jurisdiction of the court vote to not retain, a vacancy shall exist in that office upon the expiration of the term being served by the justice or judge.

(b)(1) The election of circuit judges shall be preserved notwithstanding the provisions of subsection (a) unless a majority of those voting in the jurisdiction of that circuit approve a local option to select circuit judges by merit selection and retention rather than by election. The election of circuit judges shall be by a vote of the qualified electors within the territorial jurisdiction of the court.

(2) The election of county court judges shall be preserved notwithstanding the provisions of subsection (a) unless a majority of those voting in the jurisdiction of that county approves a local option to select county judges by merit selection and retention rather than by election. The election of county court judges shall be by a vote of the qualified electors within the territorial jurisdiction of the court.

(3)a. A vote to exercise a local option to select circuit court judges and county court judges by merit selection and retention rather than by election shall be held in each circuit and county at the general election in the year 2000. If a vote to exercise this local option fails in a vote of the electors, such option shall not again be put to a vote of the electors of that jurisdiction until the expiration of at least two years.

b. After the year 2000, a circuit may initiate the local option for merit selection and retention or the election of circuit judges, whichever is applicable, by filing with the secretary of state a petition signed by the number of electors equal to at least ten percent of the votes cast in the circuit in the last preceding election in which presidential electors were chosen.

c. After the year 2000, a county may initiate the local option for merit selection and retention or the election of county court judges, whichever is applicable, by filing with the supervisor of elections a petition signed by the number of electors equal to at least ten percent of the votes cast in the county in the last preceding election in which presidential electors were chosen. The terms of circuit judges and judges of county courts shall be for six years.

§ 11. Vacancies

(a) Whenever a vacancy occurs in a judicial office to which election for retention applies, the governor shall fill the vacancy by appointing for a term ending on the first Tuesday after the first Monday in January of the year following the next general election occurring at least one year after the date of appointment, one of not fewer than three persons nor more than six persons nominated by the appropriate judicial nominating commission.

(b) The governor shall fill each vacancy on a circuit court or on a county court, wherein the judges are elected by a majority vote of the electors, by appointing for a term ending on the first Tuesday after the first Monday in January of the year following the next primary and general election occurring at least one year after the date of appointment, one of not fewer than three persons nor more than six persons nominated by the appropriate judicial nominating commission. An election shall be held to fill that judicial office for the term of the office beginning at the end of the appointed term.

(c) The nominations shall be made within thirty days from the occurrence of a vacancy unless the period is extended by the governor for a time not to exceed thirty days. The governor shall make the appointment within sixty days after the nominations have been certified to the governor.

(d) There shall be a separate judicial nominating commission as provided by general law for the supreme court, each district court of appeal, and each judicial circuit for all trial courts within the circuit. Uniform rules of procedure shall be established by the judicial nominating commissions at each level of the court system. Such rules, or any part thereof, may be repealed by general law enacted by a majority vote of the membership of each house of the legislature, or by the supreme court, five justices concurring. Except for deliberations of the judicial nominating commissions, the proceedings of the commissions and their records shall be open to the public.

§ 12. Discipline; removal and retirement

(a) Judicial qualifications commission.--A judicial qualifications commission is created.

(1) There shall be a judicial qualifications commission vested with jurisdiction to investigate and recommend to the Supreme Court of Florida the removal from office of any justice or judge whose conduct, during term of office or otherwise occurring on or after November 1, 1966, (without regard to the effective date of this section) demonstrates a present unfitness to hold office, and to investigate and recommend the discipline of a justice or judge whose conduct, during term of office or otherwise occurring on or after November 1, 1966 (without regard to the effective date of this section), warrants such discipline. For purposes of this section, discipline is defined as any or all of the following: reprimand, fine, suspension with or without pay, or lawyer discipline. The commission shall have jurisdiction over justices and judges regarding allegations that misconduct occurred before or during service as a justice or judge if a complaint is made no later than one year following service as a justice or judge. The commission shall have jurisdiction regarding allegations of incapacity during service as a justice or judge. The commission shall be composed of:

a. Two judges of district courts of appeal selected by the judges of those courts, two circuit judges selected by the judges of the circuit courts and two judges of county courts selected by the judges of those courts;

b. Four electors who reside in the state, who are members of the bar of Florida, and who shall be chosen by the governing body of the bar of Florida; and

c. Five electors who reside in the state, who have never held judicial office or been members of the bar of Florida, and who shall be appointed by the governor.

(2) The members of the judicial qualifications commission shall serve staggered terms, not to exceed six years, as prescribed by general law. No member of the commission except a judge shall be eligible for state judicial office while acting as a member of the commission and for a period of two years thereafter. No member of the commission shall hold office in a political party or participate in any campaign for judicial office or hold public office; provided that a judge may campaign for judicial office and hold that office. The commission shall elect one of its members as its chairperson.

(3) Members of the judicial qualifications commission not subject to impeachment shall be subject to removal from the commission pursuant to the provisions of Article IV, Section 7, Florida Constitution.

(4) The commission shall adopt rules regulating its proceedings, the filling of vacancies by the appointing authorities, the disqualification of members, the rotation of members between the panels, and the temporary replacement of disqualified or incapacitated members. The commission's rules, or any part thereof, may be repealed by general law enacted by a majority vote of the membership of each house of the legislature, or by the supreme court, five justices concurring. The commission shall have power to issue subpoenas. Until formal charges against a justice or judge are filed by the investigative panel with the clerk of the supreme court of Florida all proceedings by or before the commission shall be confidential; provided, however, upon a finding of probable cause and the filing by the investigative panel with said clerk of such formal charges against a justice or judge such charges and all further proceedings before the commission shall be public.

(5) The commission shall have access to all information from all executive, legislative and judicial agencies, including grand juries, subject to the rules of the commission. At any time, on request of the speaker of the house of representatives or the governor, the commission shall make available all information in the possession of the commission for use in consideration of impeachment or suspension, respectively.

(b) Panels.--The commission shall be divided into an investigative panel and a hearing panel as established by rule of the commission. The investigative panel is vested with the jurisdiction to receive or initiate complaints, conduct investigations, dismiss complaints, and upon a vote of a simple majority of the panel submit formal charges to the hearing panel. The hearing panel is vested with the authority to receive and hear formal charges from the

investigative panel and upon a two-thirds vote of the panel recommend to the supreme court the removal of a justice or judge or the involuntary retirement of a justice or judge for any permanent disability that seriously interferes with the performance of judicial duties. Upon a simple majority vote of the membership of the hearing panel, the panel may recommend to the supreme court that the justice or judge be subject to appropriate discipline.

(c) Supreme court.--The supreme court shall receive recommendations from the judicial qualifications commission's hearing panel.

(1) The supreme court may accept, reject, or modify in whole or in part the findings, conclusions, and recommendations of the commission and it may order that the justice or judge be subjected to appropriate discipline, or be removed from office with termination of compensation for willful or persistent failure to perform judicial duties or for other conduct unbecoming a member of the judiciary demonstrating a present unfitness to hold office, or be involuntarily retired for any permanent disability that seriously interferes with the performance of judicial duties. Malafides, scienter or moral turpitude on the part of a justice or judge shall not be required for removal from office of a justice or judge whose conduct demonstrates a present unfitness to hold office. After the filing of a formal proceeding and upon request of the investigative panel, the supreme court may suspend the justice or judge from office, with or without compensation, pending final determination of the inquiry.

(2) The supreme court may award costs to the prevailing party.

(d) The power of removal conferred by this section shall be both alternative and cumulative to the power of impeachment.

(e) Notwithstanding any of the foregoing provisions of this section, if the person who is the subject of proceedings by the judicial qualifications commission is a justice of the supreme court of Florida all justices of such court automatically shall be disqualified to sit as justices of such court with respect to all proceedings therein concerning such person and the supreme court for such purposes shall be composed of a panel consisting of the seven chief judges of the judicial circuits of the state of Florida most senior in tenure of judicial office as circuit judge. For purposes of determining seniority of such circuit judges in the event there be judges of equal tenure in judicial office as circuit judge the judge or judges from the lower numbered circuit or circuits shall be deemed senior. In the event any such chief circuit judge is under investigation by the judicial qualifications commission or is otherwise disqualified or unable to serve on the panel, the next most senior chief circuit judge or judges shall serve in place of such disqualified or disabled chief circuit judge.

(f) Schedule to section 12.--

(1) Except to the extent inconsistent with the provisions of this section, all provisions of law and rules of court in force on the effective date of this article shall continue in effect until superseded in the manner authorized by the constitution.

(2) After this section becomes effective and until adopted by rule of the commission consistent with it:

a. The commission shall be divided, as determined by the chairperson, into one investigative panel and one hearing panel to meet the responsibilities set forth in this section.

b. The investigative panel shall be composed of:

1. Four judges,

2. Two members of the bar of Florida, and

3. Three non-lawyers.

c. The hearing panel shall be composed of:

1. Two judges,

2. Two members of the bar of Florida, and

3. Two non-lawyers.

d. Membership on the panels may rotate in a manner determined by the rules of the commission provided that no member shall vote as a member of the investigative and hearing panel on the same proceeding.

e. The commission shall hire separate staff for each panel.

f. The members of the commission shall serve for staggered terms of six years.

g. The terms of office of the present members of the judicial qualifications commission shall expire upon the effective date of the amendments to this section approved by the legislature during the regular session of the legislature in 1996 and new members shall be appointed to serve the following staggered terms:

1. Group I.--The terms of five members, composed of two electors as set forth in s. 12(a)(1)c. of Article V, one member of the bar of Florida as set forth in s. 12(a)(1)b. of Article V, one judge from the district courts of appeal and one circuit judge as set forth in s. 12(a)(1)a. of Article V, shall expire on December 31, 1998.

2. Group II.--The terms of five members, composed of one elector as set forth in s. 12(a)(1)c. of Article V, two members of the bar of Florida as set forth in s. 12(a)(1)b. of Article V, one circuit judge and one county judge as set forth in s. 12(a)(1)a. of Article V shall expire on December 31, 2000.

3. Group III.--The terms of five members, composed of two electors as set forth in s. 12(a)(1)c. of Article V, one member of the bar of Florida as set forth in s. 12(a)(1)b., one judge from the district courts of appeal and one county judge as set forth in s. 12(a)(1)a. of Article V, shall expire on December 31, 2002.

h. An appointment to fill a vacancy of the commission shall be for the remainder of the term.

i. Selection of members by district courts of appeal judges, circuit judges, and county court judges, shall be by no less than a majority of the members voting at the respective courts' conferences. Selection of members by the board of governors of the bar of Florida shall be by no less than a majority of the board.

j. The commission shall be entitled to recover the costs of investigation and prosecution, in addition to any penalty levied by the supreme court.

k. The compensation of members and referees shall be the travel expenses or transportation and per diem allowance as provided by general law.

§ 13. Prohibited activities

All justices and judges shall devote full time to their judicial duties. They shall not engage in the practice of law or hold office in any political party.

§ 14. Funding

(a) All justices and judges shall be compensated only by state salaries fixed by general law. Funding for the state courts system, state attorneys' offices, public defenders' offices, and court-appointed counsel, except as otherwise provided in subsection (c), shall be provided from state revenues appropriated by general law.

(b) All funding for the offices of the clerks of the circuit and county courts performing court-related functions, except as otherwise provided in this subsection and subsection (c), shall be provided by adequate and appropriate filing fees for judicial proceedings and service charges and costs for performing court-related functions as required by general law. Selected salaries, costs, and expenses of the state courts system may be funded from appropriate filing fees for judicial proceedings and service charges and costs for performing court-related functions, as provided by general law. Where the requirements of either the United States Constitution or the Constitution of the State of Florida preclude the imposition of filing fees for judicial proceedings and service charges and costs for performing court-related functions sufficient to fund the court-related functions of the offices of the clerks of the circuit and county courts, the state shall provide, as determined by the legislature, adequate and appropriate supplemental funding from state revenues appropriated by general law.

(c) No county or municipality, except as provided in this subsection, shall be required to provide any funding for the state courts system, state attorneys' offices, public defenders' offices, court-appointed counsel or the offices of the clerks of the circuit and county courts for performing court-related functions. Counties shall be required to fund the cost of communications services, existing radio systems, existing multi-agency criminal justice information systems, and the cost of construction or lease, maintenance, utilities, and security of facilities for the trial courts, public defenders' offices, state attorneys' offices, and the offices of the clerks of the circuit and county courts performing court-related functions. Counties shall also pay reasonable and necessary salaries, costs, and expenses of the state courts system to meet local requirements as determined by general law.

(d) The judiciary shall have no power to fix appropriations.

§ 15. Attorneys; admission and discipline

The supreme court shall have exclusive jurisdiction to regulate the admission of persons to the practice of law and the discipline of persons admitted.

§ 16. Clerks of the circuit courts

There shall be in each county a clerk of the circuit court who shall be selected pursuant to the provisions of Article VIII section 1. Notwithstanding any other provision of the constitution, the duties of the clerk of the circuit court may be divided by special or general law between two officers, one serving as clerk of court and one serving as ex officio clerk of the board of county commissioners, auditor, recorder, and custodian of all county funds. There may be a clerk of the county court if authorized by general or special law.

§ 17. State attorneys

In each judicial circuit a state attorney shall be elected for a term of four years. Except as otherwise provided in this constitution, the state attorney shall be the prosecuting officer of all trial courts in that circuit and shall perform other duties prescribed by general law; provided, however, when authorized by general law, the violations of all municipal ordinances may be prosecuted by municipal prosecutors. A state attorney shall be an elector of the state and reside in the territorial jurisdiction of the circuit; shall be and have been a member of the bar of Florida for the preceding five years; shall devote full time to the duties of the office; and shall not engage in the private practice of law. State attorneys shall appoint such assistant state attorneys as may be authorized by law.

§ 18. Public defenders

In each judicial circuit a public defender shall be elected for a term of four years, who shall perform duties prescribed by general law. A public defender shall be an elector of the state and reside in the territorial jurisdiction of the circuit and shall be and have been a member of the Bar of Florida for the preceding five years. Public defenders shall appoint such assistant public defenders as may be authorized by law.

§ 19. Judicial officers as conservators of the peace

All judicial officers in this state shall be conservators of the peace.

§ 20. Schedule to Article V

(a) This article shall replace all of Article V of the Constitution of 1885, as amended, which shall then stand repealed.

(b) Except to the extent inconsistent with the provisions of this article, all provisions of law and rules of court in force on the effective date of this article shall continue in effect until superseded in the manner authorized by the constitution.

(c) After this article becomes effective, and until changed by general law consistent with sections 1 through 19 of this article:

(1) The supreme court shall have the jurisdiction immediately theretofore exercised by it, and it shall determine all proceedings pending before it on the effective date of this article.

(2) The appellate districts shall be those in existence on the date of adoption of this article. There shall be a district court of appeal in each district. The district courts of appeal shall have the jurisdiction immediately theretofore exercised by the district courts of appeal and shall determine all proceedings pending before them on the effective date of this article.

(3) Circuit courts shall have jurisdiction of appeals from county courts and municipal courts, except those appeals which may be taken directly to the supreme court; and they shall have exclusive original jurisdiction in all actions at law not cognizable by the county courts; or proceedings relating to the settlement of the estate of decedents and minors, the granting of letters testamentary, guardianship, involuntary hospitalization, the determination of incompetency, and other jurisdiction usually pertaining to courts of probate; in all cases in equity including all cases relating to juveniles; of all felonies and of all misdemeanors arising out of the same circumstances as a felony which is also charged; in all cases involving legality of any tax assessment or toll; in the action of ejectment; and in all actions involving the titles or boundaries or right of possession of real property. The circuit court may issue injunctions. There shall be judicial circuits which shall be the judicial circuits in existence on the date of adoption of this article. The chief judge of a circuit may authorize a county court judge to order emergency hospitalizations pursuant to Chapter 71-131, Laws of Florida, in the absence from the county of the circuit judge and the county court judge shall have the power to issue all temporary orders and temporary injunctions necessary or proper to the complete exercise of such jurisdiction.

(4) County courts shall have original jurisdiction in all criminal misdemeanor cases not cognizable by the circuit courts, of all violations of municipal and county ordinances, and of all actions at law in which the matter in controversy does not exceed the sum of two thousand five hundred dollars ($2,500.00) exclusive of interest and costs, except those within the exclusive jurisdiction of the circuit courts. Judges of county courts shall be committing magistrates. The county courts shall have jurisdiction now exercised by the county judge's courts other than that vested in the circuit court by subsection (c)(3) hereof, the jurisdiction now exercised by the county courts, the claims court, the small claims courts, the small claims magistrates courts, magistrates courts, justice of the peace courts, municipal courts and courts of chartered counties, including but not limited to the counties referred to in Article VIII, sections 9, 10, 11 and 24 of the Constitution of 1885.

(5) Each judicial nominating commission shall be composed of the following:

a. Three members appointed by the Board of Governors of The Florida Bar from among The Florida Bar members who are actively engaged in the practice of law with offices within the territorial jurisdiction of the affected court, district or circuit;

b. Three electors who reside in the territorial jurisdiction of the court or circuit appointed by the governor; and

c. Three electors who reside in the territorial jurisdiction of the court or circuit and who are not members of the bar of Florida, selected and appointed by a majority vote of the other six members of the commission.

(6) No justice or judge shall be a member of a judicial nominating commission. A member of a judicial nominating commission may hold public office other than judicial office. No member shall be eligible for appointment to state judicial office so long as that person is a member of a judicial nominating commission and for a period of two years thereafter. All acts of a judicial nominating commission shall be made with a concurrence of a majority of its members.

(7) The members of a judicial nominating commission shall serve for a term of four years except the terms of the initial members of the judicial nominating commissions shall expire as follows:

a. The terms of one member of category a. b. and c. in subsection (c)(5) hereof shall expire on July 1, 1974;

b. The terms of one member of category a. b. and c. in subsection (c)(5) hereof shall expire on July 1, 1975;

c. The terms of one member of category a. b. and c. in subsection (c)(5) hereof shall expire on July 1, 1976;

(8) All fines and forfeitures arising from offenses tried in the county court shall be collected, and accounted for by clerk of the court, and deposited in a special trust account. All fines and forfeitures received from violations of ordinances or misdemeanors committed within a county or municipal ordinances committed within a municipality within the territorial jurisdiction of the county court shall be paid monthly to the county or municipality respectively. If any costs are assessed and collected in connection with offenses tried in county court, all court costs shall be paid into the general revenue fund of the state of Florida and such other funds as prescribed by general law.

(9) Any municipality or county may apply to the chief judge of the circuit in which that municipality or county is situated for the county court to sit in a location suitable to the municipality or county and convenient in time and place to its citizens and police officers and upon such application said chief judge shall direct the court to sit in the location unless the chief judge shall determine the request is not justified. If the chief judge does not authorize the county court to sit in the location requested, the county or municipality may apply to the supreme court for an order directing the county court to sit in the location. Any municipality or county which so applies shall be required to provide the appropriate physical facilities in which the county court may hold court.

(10) All courts except the supreme court may sit in divisions as may be established by local rule approved by the supreme court.

(11) A county court judge in any county having a population of 40,000 or less according to the last decennial census, shall not be required to be a member of the bar of Florida.

(12) Municipal prosecutors may prosecute violations of municipal ordinances.

(13) Justice shall mean a justice elected or appointed to the supreme court and shall not include any judge assigned from any court.

(d) When this article becomes effective:

(1) All courts not herein authorized, except as provided by subsection (d)(4) of this section shall cease to exist and jurisdiction to conclude all pending cases and enforce all prior orders and judgments shall vest in the court that would have jurisdiction of the cause if thereafter instituted. All records of and property held by courts abolished hereby shall be transferred to the proper office of the appropriate court under this article.

(2) Judges of the following courts, if their terms do not expire in 1973 and if they are eligible under subsection (d)(8) hereof, shall become additional judges of the circuit court for each of the counties of their respective circuits, and shall serve as such circuit judges for the remainder of the terms to which they were elected and shall be eligible for election as circuit judges thereafter. These courts are: civil court of record of Dade county, all criminal courts of record, the felony courts of record of Alachua, Leon and Volusia Counties, the courts of record of Broward, Brevard, Escambia, Hillsborough, Lee, Manatee and Sarasota Counties, the civil and criminal court of record of Pinellas County, and county judge's courts and separate juvenile courts in counties having a population in excess of 100,000 according to the 1970 federal census. On the effective date of this article, there shall be an additional number of positions of circuit judges equal to the number of existing circuit judges and the number of judges of the above named courts whose term expires in 1973. Elections to such offices shall take place at the same time and manner as elections to other state judicial offices in 1972 and the terms of such offices shall be for a term of six years. Unless changed pursuant to section nine of this article, the number of circuit judges presently existing and created by this subsection shall not be changed.

(3) In all counties having a population of less than 100,000 according to the 1970 federal census and having more than one county judge on the date of the adoption of this article, there shall be the same number of judges of the county court as there are county judges existing on that date unless changed pursuant to section 9 of this article.

(4) Municipal courts shall continue with their same jurisdiction until amended or terminated in a manner prescribed by special or general law or ordinances, or until January 3, 1977, whichever occurs first. On that date all municipal courts not previously abolished shall cease to exist. Judges of municipal courts shall remain in office and be subject to reappointment or reelection in the manner prescribed by law until said courts are terminated pursuant to the provisions of this subsection. Upon municipal courts being terminated or abolished in accordance with the provisions of this subsection, the judges thereof who are not members of the bar of Florida, shall be eligible to seek election as judges of county courts of their respective counties.

(5) Judges, holding elective office in all other courts abolished by this article, whose terms do not expire in 1973 including judges established pursuant to Article VIII, sections 9 and 11 of the Constitution of 1885 shall serve as judges of the county court for the remainder of the term to which they were elected. Unless created pursuant to section 9, of this Article V such judicial office shall not continue to exist thereafter.

(6) By March 21, 1972, the supreme court shall certify the need for additional circuit and county judges. The legislature in the 1972 regular session may by general law create additional offices of judge, the terms of which shall begin on the effective date of this article. Elections to such offices shall take place at the same time and manner as election to other state judicial offices in 1972.

(7) County judges of existing county judge's courts and justices of the peace and magistrates' court who are not members of bar of Florida shall be eligible to seek election as county court judges of their respective counties.

(8) No judge of a court abolished by this article shall become or be eligible to become a judge of the circuit court unless the judge has been a member of bar of Florida for the preceding five years.

(9) The office of judges of all other courts abolished by this article shall be abolished as of the effective date of this article.

(10) The offices of county solicitor and prosecuting attorney shall stand abolished, and all county solicitors and prosecuting attorneys holding such offices upon the effective date of this article shall become and serve as assistant state attorneys for the circuits in which their counties are situate for the remainder of their terms, with compensation not less than that received immediately before the effective date of this article.

(e) Limited operation of some provisions.--

(1) All justices of the supreme court, judges of the district courts of appeal and circuit judges in office upon the effective date of this article shall retain their offices for the remainder of their respective terms. All members of the judicial qualifications commission in office upon the effective date of this article shall retain their offices for the remainder of their respective terms. Each state attorney in office on the effective date of this article shall retain the office for the remainder of the term.

(2) No justice or judge holding office immediately after this article becomes effective who held judicial office on July 1, 1957, shall be subject to retirement from judicial office because of age pursuant to section 8 of this article.

(f) Until otherwise provided by law, the nonjudicial duties required of county judges shall be performed by the judges of the county court.

(g) All provisions of Article V of the Constitution of 1885, as amended, not embraced herein which are not inconsistent with this revision shall become statutes subject to modification or repeal as are other statutes.

(h) The requirements of section 14 relative to all county court judges or any judge of a municipal court who continues to hold office pursuant to subsection (d)(4) hereof being compensated by state salaries shall not apply prior to January 3, 1977, unless otherwise provided by general law.

(i) Deletion of obsolete schedule items.--The legislature shall have power, by concurrent resolution, to delete from this article any subsection of this section 20 including this subsection, when all events to which the subsection to be deleted is or could become applicable have occurred. A legislative determination of fact made as a basis for application of this subsection shall be subject to judicial review.

(j) Effective date.--Unless otherwise provided herein, this article shall become effective at 11:59 o'clock P.M., Eastern Standard Time, January 1, 1973.

Article VI. Suffrage and Elections

§ 1. Regulation of elections

All elections by the people shall be by direct and secret vote. General elections shall be determined by a plurality of votes cast. Registration and elections shall, and political party functions may, be regulated by law; however, the requirements for a candidate with no party affiliation or for a candidate of a minor party for placement of the candidate's name on the ballot shall be no greater than the requirements for a candidate of the party having the largest number of registered voters.

§ 2. Electors

Every citizen of the United States who is at least eighteen years of age and who is a permanent resident of the state, if registered as provided by law, shall be an elector of the county where registered.

§ 3. Oath

Each eligible citizen upon registering shall subscribe the following: "I do solemnly swear (or affirm) that I will protect and defend the Constitution of the United States and the Constitution of the State of Florida, and that I am qualified to register as an elector under the Constitution and laws of the State of Florida."

§ 4. Disqualifications

(a) No person convicted of a felony, or adjudicated in this or any other state to be mentally incompetent, shall be qualified to vote or hold office until restoration of civil rights or removal of disability.
(b) No person may appear on the ballot for re-election to any of the following offices:
(1) Florida representative,
(2) Florida senator,
(3) Florida Lieutenant governor,
(4) any office of the Florida cabinet,
(5) U.S. Representative from Florida, or
(6) U.S. Senator from Florida if, by the end of the current term of office, the person will have served (or, but for resignation, would have served) in that office for eight consecutive years.

§ 5. Primary, general, and special elections

(a) A general election shall be held in each county on the first Tuesday after the first Monday in November of each even-numbered year to choose a successor to each elective state and county officer whose term will expire before the next general election and, except as provided herein, to fill each vacancy in elective office for the unexpired portion of the term. A general election may be suspended or delayed due to a state of emergency or impending emergency pursuant to general law. Special elections and referenda shall be held as provided by law.
(b) If all candidates for an office have the same party affiliation and the winner will have no opposition in the general election, all qualified electors, regardless of party affiliation, may vote in the primary elections for that office.

§ 6. Municipal and district elections

Registration and elections in municipalities shall, and in other governmental entities created by statute may, be provided by law.

§ 7. Campaign spending limits and funding of campaigns for elective state-wide office

It is the policy of this state to provide for state-wide elections in which all qualified candidates may compete effectively. A method of public financing for campaigns for state-wide office shall be established by law. Spending limits shall be established for such campaigns for candidates who use public funds in their campaigns. The legislature shall provide funding for this provision. General law implementing this paragraph shall be at least as protective of effective competition by a candidate who uses public funds as the general law in effect on January 1, 1998.

Article VII. Finance and Taxation

§ 1. Taxation; appropriations; state expenses; state revenue limitation

(a) No tax shall be levied except in pursuance of law. No state ad valorem taxes shall be levied upon real estate or tangible personal property. All other forms of taxation shall be preempted to the state except as provided by general law.

(b) Motor vehicles, boats, airplanes, trailers, trailer coaches and mobile homes, as defined by law, shall be subject to a license tax for their operation in the amounts and for the purposes prescribed by law, but shall not be subject to ad valorem taxes.

(c) No money shall be drawn from the treasury except in pursuance of appropriation made by law.

(d) Provision shall be made by law for raising sufficient revenue to defray the expenses of the state for each fiscal period.

(e) Except as provided herein, state revenues collected for any fiscal year shall be limited to state revenues allowed under this subsection for the prior fiscal year plus an adjustment for growth. As used in this subsection, "growth" means an amount equal to the average annual rate of growth in Florida personal income over the most recent twenty quarters times the state revenues allowed under this subsection for the prior fiscal year. For the 1995-1996 fiscal year, the state revenues allowed under this subsection for the prior fiscal year shall equal the state revenues collected for the 1994-1995 fiscal year. Florida personal income shall be determined by the legislature, from information available from the United States Department of Commerce or its successor on the first day of February prior to the beginning of the fiscal year. State revenues collected for any fiscal year in excess of this limitation shall be transferred to the budget stabilization fund until the fund reaches the maximum balance specified in Section 19(g) of Article III, and thereafter shall be refunded to taxpayers as provided by general law. State revenues allowed under this subsection for any fiscal year may be increased by a two-thirds vote of the membership of each house of the legislature in a separate bill that contains no other subject and that sets forth the dollar amount by which the state revenues allowed will be increased. The vote may not be taken less than seventy-two hours after the third reading of the bill. For purposes of this subsection, "state revenues" means taxes, fees, licenses, and charges for services imposed by the legislature on individuals, businesses, or agencies outside state government. However, "state revenues" does not include: revenues that are necessary to meet the requirements set forth in documents authorizing the issuance of bonds by the state; revenues that are used to provide matching funds for the federal Medicaid program with the exception of the revenues used to support the Public Medical Assistance Trust Fund or its successor program and with the exception of state matching funds used to fund elective expansions made after July 1, 1994; proceeds from the state lottery returned as prizes; receipts of the Florida Hurricane Catastrophe Fund; balances carried forward from prior fiscal years; taxes, licenses, fees, and charges for services imposed by local, regional, or school district governing bodies; or revenue from taxes, licenses, fees, and charges for services required to be imposed by any amendment or revision to this constitution after July 1, 1994. An adjustment to the revenue limitation shall be made by general law to reflect the fiscal impact of transfers of responsibility for the funding of governmental functions between the state and other levels of government. The legislature shall, by general law, prescribe procedures necessary to administer this subsection.

§ 2. Taxes; rate

All ad valorem taxation shall be at a uniform rate within each taxing unit, except the taxes on intangible personal property may be at different rates but shall never exceed two mills on the dollar of assessed value; provided, as to any obligations secured by mortgage, deed of trust, or other lien on real estate wherever located, an intangible tax of not more than two mills on the dollar may be levied by law to be in lieu of all other intangible assessments on such obligations.

§ 3. Taxes; exemptions

(a) All property owned by a municipality and used exclusively by it for municipal or public purposes shall be exempt from taxation. A municipality, owning property outside the municipality, may be required by general law to make payment to the taxing unit in which the property is located. Such portions of property as are used predominantly for educational, literary, scientific, religious or charitable purposes may be exempted by general law from taxation.

(b) There shall be exempt from taxation, cumulatively, to every head of a family residing in this state, household goods and personal effects to the value fixed by general law, not less than one thousand dollars, and to every widow or widower or person who is blind or totally and permanently disabled, property to the value fixed by general law not less than five hundred dollars.

(c) Any county or municipality may, for the purpose of its respective tax levy and subject to the provisions of this subsection and general law, grant community and economic development ad valorem tax exemptions to new

businesses and expansions of existing businesses, as defined by general law. Such an exemption may be granted only by ordinance of the county or municipality, and only after the electors of the county or municipality voting on such question in a referendum authorize the county or municipality to adopt such ordinances. An exemption so granted shall apply to improvements to real property made by or for the use of a new business and improvements to real property related to the expansion of an existing business and shall also apply to tangible personal property of such new business and tangible personal property related to the expansion of an existing business. The amount or limits of the amount of such exemption shall be specified by general law. The period of time for which such exemption may be granted to a new business or expansion of an existing business shall be determined by general law. The authority to grant such exemption shall expire ten years from the date of approval by the electors of the county or municipality, and may be renewable by referendum as provided by general law.

(d) By general law and subject to conditions specified therein, there may be granted an ad valorem tax exemption to a renewable energy source device and to real property on which such device is installed and operated, to the value fixed by general law not to exceed the original cost of the device, and for the period of time fixed by general law not to exceed ten years.

(e) Any county or municipality may, for the purpose of its respective tax levy and subject to the provisions of this subsection and general law, grant historic preservation ad valorem tax exemptions to owners of historic properties. This exemption may be granted only by ordinance of the county or municipality. The amount or limits of the amount of this exemption and the requirements for eligible properties must be specified by general law. The period of time for which this exemption may be granted to a property owner shall be determined by general law.

§ 4. Taxation; assessments

By general law regulations shall be prescribed which shall secure a just valuation of all property for ad valorem taxation, provided:

(a) Agricultural land, land producing high water recharge to Florida's aquifers, or land used exclusively for noncommercial recreational purposes may be classified by general law and assessed solely on the basis of character or use.

(b) Pursuant to general law tangible personal property held for sale as. stock in trade and livestock may be valued for taxation at a specified percentage of its value, may be classified for tax purposes, or may be exempted from taxation.

(c) All persons entitled to a homestead exemption under Section 6 of this Article shall have their homestead assessed at just value as of January 1 of the year following the effective date of this amendment. This assessment shall change only as provided herein.

(1) Assessments subject to this provision shall be changed annually on January 1st of each year; but those changes in assessments shall not exceed the lower of the following:

a. Three percent (3%) of the assessment for the prior year.

b. The percent change in the Consumer Price Index for all urban consumers, U.S. City Average, all items 1967=100, or successor reports for the preceding calendar year as initially reported by the United States Department of Labor, Bureau of Labor Statistics.

(2) No assessment shall exceed just value.

(3) After any change of ownership, as provided by general law, homestead property shall be assessed at just value as of January 1 of the following year. Thereafter, the homestead shall be assessed as provided herein.

(4) New homestead property shall be assessed at just value as of January 1st of the year following the establishment of the homestead. That assessment shall only change as provided herein.

(5) Changes, additions, reductions, or improvements to homestead property shall be assessed as provided for by general law; provided, however, after the adjustment for any change, addition, reduction, or improvement, the property shall be assessed as provided herein.

(6) In the event of a termination of homestead status, the property shall be assessed as provided by general law.

(7) The provisions of this amendment are severable. If any of the provisions of this amendment shall be held unconstitutional by any court of competent jurisdiction, the decision of such court shall not affect or impair any remaining provisions of this amendment.

(d) The legislature may, by general law, for assessment purposes and subject to the provisions of this subsection, allow counties and municipalities to authorize by ordinance that historic property may be assessed solely on the basis of character or use. Such character or use assessment shall apply only to the jurisdiction adopting the ordinance. The requirements for eligible properties must be specified by general law.

(e) A county may, in the manner prescribed by general law, provide for a reduction in the assessed value of homestead property to the extent of any increase in the assessed value of that property which results from the construction or reconstruction of the property for the purpose of providing living quarters for one or more natural or adoptive grandparents or parents of the owner of the property or of the owner's spouse if at least one of the grandparents or parents for whom the living quarters are provided is 62 years of age or older. Such a reduction may not exceed the lesser of the following:

(1) The increase in assessed value resulting from construction or reconstruction of the property.
(2) Twenty percent of the total assessed value of the property as improved.

§ 5. Estate, inheritance and income taxes

(a) Natural persons. No tax upon estates or inheritances or upon the income of natural persons who are residents or citizens of the state shall be levied by the state, or under its authority, in excess of the aggregate of amounts which may be allowed to be credited upon or deducted from any similar tax levied by the United States or any state.
(b) Others. No tax upon the income of residents and citizens other than natural persons shall be levied by the state, or under its authority, in excess of 5% of net income, as defined by law, or at such greater rate as is authorized by a three-fifths (3/5) vote of the membership of each house of the legislature or as will provide for the state the maximum amount which may be allowed to be credited against income taxes levied by the United States and other states. There shall be exempt from taxation not less than five thousand dollars ($5,000) of the excess of net income subject to tax over the maximum amount allowed to be credited against income taxes levied by the United States and other states.
(c) Effective date. This section shall become effective immediately upon approval by the electors of Florida.

§ 6. Homestead exemptions

(a) Every person who has the legal or equitable title to real estate and maintains thereon the permanent residence of the owner, or another legally or naturally dependent upon the owner, shall be exempt from taxation thereon, except assessments for special benefits, up to the assessed valuation of five thousand dollars, upon establishment of right thereto in the manner prescribed by law. The real estate may be held by legal or equitable title, by the entireties, jointly, in common, as a condominium, or indirectly by stock ownership or membership representing the owner's or member's proprietary interest in a corporation owning a fee or a leasehold initially in excess of ninety-eight years.
(b) Not more than one exemption shall be allowed any individual or family unit or with respect to any residential unit. No exemption shall exceed the value of the real estate assessable to the owner or, in case of ownership through stock or membership in a corporation, the value of the proportion which the interest in the corporation bears to the assessed value of the property.
(c) By general law and subject to conditions specified therein, the exemption shall be increased to a total of twenty-five thousand dollars of the assessed value of the real estate for each school district levy. By general law and subject to conditions specified therein, the exemption for all other levies may be increased up to an amount not exceeding ten thousand dollars of the assessed value of the real estate if the owner has attained age sixty-five or is totally and permanently disabled and if the owner is not entitled to the exemption provided in subsection (d).
(d) By general law and subject to conditions specified therein, the exemption shall be increased to a total of the following amounts of assessed value of real estate for each levy other than those of school districts: fifteen thousand dollars with respect to 1980 assessments; twenty thousand dollars with respect to 1981 assessments; twenty-five thousand dollars with respect to assessments for 1982 and each year thereafter. However, such increase shall not apply with respect to any assessment roll until such roll is first determined to be in compliance with the provisions of section 4 by a state agency designated by general law. This subsection shall stand repealed on the effective date of any amendment to section 4 which provides for the assessment of homestead property at a specified percentage of its just value.
(e) By general law and subject to conditions specified therein, the Legislature may provide to renters, who are permanent residents, ad valorem tax relief on all ad valorem tax levies. Such ad valorem tax relief shall be in the form and amount established by general law.
(f) The legislature may, by general law, allow counties or municipalities, for the purpose of their respective tax levies and subject to the provisions of general law, to grant an additional homestead tax exemption not exceeding twenty-five thousand dollars to any person who has the legal or equitable title to real estate and maintains thereon the permanent residence of the owner and who has attained age sixty-five and whose household income, as defined by general law, does not exceed twenty thousand dollars. The general law must allow counties and municipalities to grant this additional exemption, within the limits prescribed in this subsection, by ordinance adopted in the manner prescribed by general law, and must provide for the periodic adjustment of the income limitation prescribed in this subsection for changes in the cost of living.

§ 7. Allocation of pari-mutuel taxes

Taxes upon the operation of pari-mutuel pools may be preempted to the state or allocated in whole or in part to the counties. When allocated to the counties, the distribution shall be in equal amounts to the several counties.

§ 8. Aid to local governments

State funds may be appropriated to the several counties, school districts, municipalities or special districts upon such conditions as may be provided by general law. These conditions may include the use of relative ad valorem assessment levels determined by a state agency designated by general law.

§ 9. Local taxes

(a) Counties, school districts, and municipalities shall, and special districts may, be authorized by law to levy ad valorem taxes and may be authorized by general law to levy other taxes, for their respective purposes, except ad valorem taxes on intangible personal property and taxes prohibited by this constitution.

(b) Ad valorem taxes, exclusive of taxes levied for the payment of bonds and taxes levied for periods not longer than two years when authorized by vote of the electors who are the owners of freeholds therein not wholly exempt from taxation, shall not be levied in excess of the following millages upon the assessed value of real estate and tangible personal property: for all county purposes, ten mills; for all municipal purposes, ten mills; for all school purposes, ten mills; for water management purposes for the northwest portion of the state lying west of the line between ranges two and three east, 0.05 mill; for water management purposes for the remaining portions of the state, 1.0 mill; and for all other special districts a millage authorized by law approved by vote of the electors who are owners of freeholds therein not wholly exempt from taxation. A county furnishing municipal services may, to the extent authorized by law, levy additional taxes within the limits fixed for municipal purposes.

§ 10. Pledging credit

Neither the state nor any county, school district, municipality, special district, or agency of any of them, shall become a joint owner with, or stockholder of, or give, lend or use its taxing power or credit to aid any corporation, association, partnership or person; but this shall not prohibit laws authorizing:

(a) the investment of public trust funds;

(b) the investment of other public funds in obligations of, or insured by, the United States or any of its instrumentalities;

(c) the issuance and sale by any county, municipality, special district or other local governmental body of (1) revenue bonds to finance or refinance the cost of capital projects for airports or port facilities, or (2) revenue bonds to finance or refinance the cost of capital projects for industrial or manufacturing plants to the extent that the interest thereon is exempt from income taxes under the then existing laws of the United States, when, in either case, the revenue bonds are payable solely from revenue derived from the sale, operation or leasing of the projects. If any project so financed, or any part thereof, is occupied or operated by any private corporation, association, partnership or person pursuant to contract or lease with the issuing body, the property interest created by such contract or lease shall be subject to taxation to the same extent as other privately owned property.

(d) a municipality, county, special district, or agency of any of them, being a joint owner of, giving, or lending or using its taxing power or credit for the joint ownership, construction and operation of electrical energy generating or transmission facilities with any corporation, association, partnership or person.

§ 11. State bonds; revenue bonds

(a) State bonds pledging the full faith and credit of the state may be issued only to finance or refinance the cost of state fixed capital outlay projects authorized by law, and purposes incidental thereto, upon approval by a vote of the electors; provided state bonds issued pursuant to this subsection may be refunded without a vote of the electors at a lower net average interest cost rate. The total outstanding principal of state bonds issued pursuant to this subsection shall never exceed fifty percent of the total tax revenues of the state for the two preceding fiscal years, excluding any tax revenues held in trust under the provisions of this constitution.

(b) Moneys sufficient to pay debt service on state bonds as the same becomes due shall be appropriated by law.

(c) Any state bonds pledging the full faith and credit of the state issued under this section or any other section of this constitution may be combined for the purposes of sale.

(d) Revenue bonds may be issued by the state or its agencies without a vote of the electors to finance or refinance the cost of state fixed capital outlay projects authorized by law, and purposes incidental thereto, and shall be payable solely from funds derived directly from sources other than state tax revenues.

(e) Bonds pledging all or part of a dedicated state tax revenue may be issued by the state in the manner provided by general law to finance or refinance the acquisition and improvement of land, water areas, and related property interests and resources for the purposes of conservation, outdoor recreation, water resource development, restoration of natural systems, and historic preservation.

(f) Each project, building, or facility to be financed or refinanced with revenue bonds issued under this section shall first be approved by the Legislature by an act relating to appropriations or by general law.

§ 12. Local bonds

Counties, school districts, municipalities, special districts and local governmental bodies with taxing powers may issue bonds, certificates of indebtedness or any form of tax anticipation certificates, payable from ad valorem taxation and maturing more than twelve months after issuance only:

(a) to finance or refinance capital projects authorized by law and only when approved by vote of the electors who are owners of freeholds therein not wholly exempt from taxation; or

(b) to refund outstanding bonds and interest and redemption premium thereon at a lower net average interest cost rate.

§ 13. Relief from illegal taxes

Until payment of all taxes which have been legally assessed upon the property of the same owner, no court shall grant relief from the payment of any tax that may be illegal or illegally assessed.

§ 14. Bonds for pollution control and abatement and other water facilities

(a) When authorized by law, state bonds pledging the full faith and credit of the state may be issued without an election to finance the construction of air and water pollution control and abatement and solid waste disposal facilities and other water facilities authorized by general law (herein referred to as "facilities") to be operated by any municipality, county, district or authority, or any agency thereof (herein referred to as "local governmental agencies"), or by any agency of the State of Florida. Such bonds shall be secured by a pledge of and shall be payable primarily from all or any part of revenues to be derived from operation of such facilities, special assessments, rentals to be received under lease-purchase agreements herein provided for, any other revenues that may be legally available for such purpose, including revenues from other facilities, or any combination thereof (herein collectively referred to as "pledged revenues"), and shall be additionally secured by the full faith and credit of the State of Florida.

(b) No such bonds shall be issued unless a state fiscal agency, created by law, has made a determination that in no state fiscal year will the debt service requirements of the bonds proposed to be issued and all other bonds secured by the pledged revenues exceed seventy-five per cent of the pledged revenues.

(c) The state may lease any of such facilities to any local governmental agency, under lease-purchase agreements for such periods and under such other terms and conditions as may be mutually agreed upon. The local governmental agencies may pledge the revenues derived from such leased facilities or any other available funds for the payment of rentals thereunder; and, in addition, the full faith and credit and taxing power of such local governmental agencies may be pledged for the payment of such rentals without any election of freeholder electors or qualified electors.

(d) The state may also issue such bonds for the purpose of loaning money to local governmental agencies, for the construction of such facilities to be owned or operated by any of such local governmental agencies. Such loans shall bear interest at not more than one-half of one per cent per annum greater than the last preceding issue of state bonds pursuant to this section, shall be secured by the pledge revenues, and may be additionally secured by the full faith and credit of the local governmental agencies.

(e) The total outstanding principal of state bonds issued pursuant to this section 14 shall never exceed fifty per cent of the total tax revenues of the state for the two preceding fiscal years.

§ 15. Revenue bonds for scholarship loans

(a) When authorized by law, revenue bonds may be issued to establish a fund to make loans to students determined eligible as prescribed by law and who have been admitted to attend any public or private institutions of higher learning, junior colleges, health related training institutions, or vocational training centers, which are recognized or accredited under terms and conditions prescribed by law. Revenue bonds issued pursuant to this section shall be secured by a pledge of and shall be payable primarily from payments of interest, principal, and handling charges to such fund from the recipients of the loans and, if authorized by law, may be additionally secured by student fees and by any other moneys in such fund. There shall be established from the proceeds of each issue of revenue bonds a reserve account in an amount equal to and sufficient to pay the greatest amount of principal, interest, and handling charges to become due on such issue in any ensuing state fiscal year.

(b) Interest moneys in the fund established pursuant to this section, not required in any fiscal year for payment of debt service on then outstanding revenue bonds or for maintenance of the reserve account, may be used for educational loans to students determined to be eligible therefor in the manner provided by law, or for such other related purposes as may be provided by law.

§ 16. Bonds for housing and related facilities

(a) When authorized by law, revenue bonds may be issued without an election to finance or refinance housing and related facilities in Florida, herein referred to as "facilities."

(b) The bonds shall be secured by a pledge of and shall be payable primarily from all or any part of revenues to be derived from the financing, operation or sale of such facilities, mortgage or loan payments, and any other revenues or assets that may be legally available for such purposes derived from sources other than ad valorem taxation, including revenues from other facilities, or any combination thereof, herein collectively referred to as "pledged revenues," provided that in no event shall the full faith and credit of the state be pledged to secure such revenue bonds.

(c) No bonds shall be issued unless a state fiscal agency, created by law, has made a determination that in no state fiscal year will the debt service requirements of the bonds proposed to be issued and all other bonds secured by the same pledged revenues exceed the pledged revenues available for payment of such debt service requirements, as defined by law.

§ 17. Bonds for acquiring transportation right-of-way or for constructing bridges

(a) When authorized by law, state bonds pledging the full faith and credit of the state may be issued, without a vote of the electors, to finance or refinance the cost of acquiring real property or the rights to real property for state roads as defined by law, or to finance or refinance the cost of state bridge construction, and purposes incidental to such property acquisition or state bridge construction.

(b) Bonds issued under this section shall be secured by a pledge of and shall be payable primarily from motor fuel or special fuel taxes, except those defined in Section 9(c) of Article XII, as provided by law, and shall additionally be secured by the full faith and credit of the state.

(c) No bonds shall be issued under this section unless a state fiscal agency, created by law, has made a determination that in no state fiscal year will the debt service requirements of the bonds proposed to be issued and all other bonds secured by the same pledged revenues exceed ninety percent of the pledged revenues available for payment of such debt service requirements, as defined by law. For the purposes of this subsection, the term "pledged revenues" means all revenues pledged to the payment of debt service, excluding any pledge of the full faith and credit of the state.

§ 18. Laws requiring counties or municipalities to spend funds or limiting their ability to raise revenue or receive state tax revenue

(a) No county or municipality shall be bound by any general law requiring such county or municipality to spend funds or to take an action requiring the expenditure of funds unless the legislature has determined that such law fulfills an important state interest and unless: funds have been appropriated that have been estimated at the time of enactment to be sufficient to fund such expenditure; the legislature authorizes or has authorized a county or municipality to enact a funding source not available for such county or municipality on February 1, 1989, that can be used to generate the amount of funds estimated to be sufficient to fund such expenditure by a simple majority vote of the governing body of such county or municipality; the law requiring such expenditure is approved by two-thirds of the membership in each house of the legislature; the expenditure is required to comply with a law that applies to all persons similarly situated, including the state and local governments; or the law is either required to comply with a federal requirement or required for eligibility for a federal entitlement, which federal requirement specifically contemplates actions by counties or municipalities for compliance.

(b) Except upon approval of each house of the legislature by two-thirds of the membership, the legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the authority that municipalities or counties have to raise revenues in the aggregate, as such authority exists on February 1, 1989.

(c) Except upon approval of each house of the legislature by two-thirds of the membership, the legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the percentage of a state tax shared with counties and municipalities as an aggregate on February 1, 1989. The provisions of this subsection shall not apply to enhancements enacted after February 1, 1989, to state tax sources, or during a fiscal emergency declared in a written joint proclamation issued by the president of the senate and the speaker of the house of representatives, or where the legislature provides additional state-shared revenues which are anticipated to be sufficient to replace the anticipated aggregate loss of state-shared revenues resulting from the reduction of the percentage of the state tax shared with counties and municipalities, which source of replacement revenues shall be subject to the same requirements for repeal or modification as provided herein for a state-shared tax source existing on February 1, 1989.

(d) Laws adopted to require funding of pension benefits existing on the effective date of this section, criminal laws, election laws, the general appropriations act, special appropriations acts, laws reauthorizing but not expanding then-existing statutory authority, laws having insignificant fiscal impact, and laws creating, modifying, or repealing noncriminal infractions, are exempt from the requirements of this section.

(e) The legislature may enact laws to assist in the implementation and enforcement of this section.

Article VIII. Local Government

§ 1. Counties

(a) Political subdivisions. The state shall be divided by law into political subdivisions called counties. Counties may be created, abolished or changed by law, with provision for payment or apportionment of the public debt.
(b) County funds. The care, custody, and method of disbursing county funds shall be provided by general law.
(c) Government. Pursuant to general or special law, a county government may be established by charter which shall be adopted, amended or repealed only upon vote of the electors of the county in a special election called for that purpose.
(d) County officers. There shall be elected by the electors of each county, for terms of four years, a sheriff, a tax collector, a property appraiser, a supervisor of elections, and a clerk of the circuit court; except, when provided by county charter or special law approved by vote of the electors of the county, any county officer may be chosen in another manner therein specified, or any county office may be abolished when all the duties of the office prescribed by general law are transferred to another office. When not otherwise provided by county charter or special law approved by vote of the electors, the clerk of the circuit court shall be ex officio clerk of the board of county commissioners, auditor, recorder and custodian of all county funds.
(e) Commissioners. Except when otherwise provided by county charter, the governing body of each county shall be a board of county commissioners composed of five or seven members serving staggered terms of four years. After each decennial census the board of county commissioners shall divide the county into districts of contiguous territory as nearly equal in population as practicable. One commissioner residing in each district shall be elected as provided by law.
(f) Non-charter government. Counties not operating under county charters shall have such power of self-government as is provided by general or special law. The board of county commissioners of a county not operating under a charter may enact, in a manner prescribed by general law, county ordinances not inconsistent with general or special law, but an ordinance in conflict with a municipal ordinance shall not be effective within the municipality to the extent of such conflict.
(g) Charter government. Counties operating under county charters shall have all powers of local self-government not inconsistent with general law, or with special law approved by vote of the electors. The governing body of a county operating under a charter may enact county ordinances not inconsistent with general law. The charter shall provide which shall prevail in the event of conflict between county and municipal ordinances.
(h) Taxes; limitation. Property situate within municipalities shall not be subject to taxation for services rendered by the county exclusively for the benefit of the property or residents in unincorporated areas.
(i) County ordinances. Each county ordinance shall be filed with the custodian of state records and shall become effective at such time thereafter as is provided by general law.
(j) Violation of ordinances. Persons violating county ordinances shall be prosecuted and punished as provided by law.
(k) County seat. In every county there shall be a county seat at which shall be located the principal offices and permanent records of all county officers. The county seat may not be moved except as provided by general law. Branch offices for the conduct of county business may be established elsewhere in the county by resolution of the governing body of the county in the manner prescribed by law. No instrument shall be deemed recorded until filed at the county seat, or a branch office designated by the governing body of the county for the recording of instruments, according to law.

§ 2. Municipalities

(a) Establishment. Municipalities may be established or abolished and their charters amended pursuant to general or special law. When any municipality is abolished, provision shall be made for the protection of its creditors.
(b) Powers. Municipalities shall have governmental, corporate and proprietary powers to enable them to conduct municipal government, perform municipal functions and render municipal services, and may exercise any power for municipal purposes except as otherwise provided by law. Each municipal legislative body shall be elective.
(c) Annexation. Municipal annexation of unincorporated territory, merger of municipalities, and exercise of extra-territorial powers by municipalities shall be as provided by general or special law.

§ 3. Consolidation

The government of a county and the government of one or more municipalities located therein may be consolidated into a single government which may exercise any and all powers of the county and the several municipalities. The consolidation plan may be proposed only by special law, which shall become effective if approved by vote of the electors of the county, or of the county and municipalities affected, as may be provided in the plan. Consolidation shall not extend the territorial scope of taxation for the payment of pre-existing debt except to areas whose residents

receive a benefit from the facility or service for which the indebtedness was incurred.

§ 4. Transfer of powers

By law or by resolution of the governing bodies of each of the governments affected, any function or power of a county, municipality or special district may be transferred to or contracted to be performed by another county, municipality or special district, after approval by vote of the electors of the transferor and approval by vote of the electors of the transferee, or as otherwise provided by law.

§ 5. Local option

(a) Local option on the legality or prohibition of the sale of intoxicating liquors, wines or beers shall be preserved to each county. The status of a county with respect thereto shall be changed only by vote of the electors in a special election called upon the petition of twenty-five per cent of the electors of the county, and not sooner than two years after an earlier election on the same question. Where legal, the sale of intoxicating liquors, wines and beers shall be regulated by law.

(b) Each county shall have the authority to require a criminal history records check and a 3 to 5-day waiting period, excluding weekends and legal holidays, in connection with the sale of any firearm occurring within such county. For purposes of this subsection, the term "sale" means the transfer of money or other valuable consideration for any firearm when any part of the transaction is conducted on property to which the public has the right of access. Holders of a concealed weapons permit as prescribed by general law shall not be subject to the provisions of this subsection when purchasing a firearm.

§ 6. Schedule to Article VIII

(a) This article shall replace all of Article VIII of the Constitution of 1885, as amended, except those sections expressly retained and made a part of this article by reference.

(b) Counties; county seats; municipalities; districts. The status of the following items as they exist on the date this article becomes effective is recognized and shall be continued until changed in accordance with law: the counties of the state; their status with respect to the legality of the sale of intoxicating liquors, wines and beers; the method of selection of county officers; the performance of municipal functions by county officers; the county seats; and the municipalities and special districts of the state, their powers, jurisdiction and government.

(c) Officers to continue in office. Every person holding office when this article becomes effective shall continue in office for the remainder of the term if that office is not abolished. If the office is abolished the incumbent shall be paid adequate compensation, to be fixed by law, for the loss of emoluments for the remainder of the term.

(d) Ordinances. Local laws relating only to unincorporated areas of a county on the effective date of this article may be amended or repealed by county ordinance.

(e) Consolidation and home rule. Article VIII, Sections 9, 10, 11 and 24, of the Constitution of 1885, as amended, shall remain in full force and effect as to each county affected, as if this article had not been adopted, until that county shall expressly adopt a charter or home rule plan pursuant to this article. All provisions of the Metropolitan Dade County Home Rule Charter, heretofore or hereafter adopted by the electors of Dade County pursuant to Article VIII, Section 11, of the Constitution of 1885, as amended, shall be valid, and any amendments to such charter shall be valid; provided that the said provisions of such charter and the said amendments thereto are authorized under said Article VIII, Section 11, of the Constitution of 1885, as amended.

(f) Dade county; powers conferred upon municipalities. To the extent not inconsistent with the powers of existing municipalities or general law, the Metropolitan Government of Dade County may exercise all the powers conferred now or hereafter by general law upon municipalities.

(g) Deletion of obsolete schedule items. The legislature shall have power, by joint resolution, to delete from this article any subsection of this Section 6, including this subsection, when all events to which the subsection to be deleted is or could become applicable have occurred. A legislative determination of fact made as a basis for application of this subsection shall be subject to judicial review.

Article IX. Education

§ 1. Public education

(a) The education of children is a fundamental value of the people of the State of Florida. It is, therefore, a paramount duty of the state to make adequate provision for the education of all children residing within its borders. Adequate provision shall be made by law for a uniform, efficient, safe, secure, and high quality system of free public schools that allows students to obtain a high quality education and for the establishment, maintenance, and operation of institutions of higher learning and other public education programs that the needs of the people may require. To assure that children attending public schools obtain a high quality education, the legislature shall make adequate provision to ensure that, by the beginning of the 2010 school year, there are a sufficient number of classrooms so that:

(1) The maximum number of students who are assigned to each teacher who is teaching in public school classrooms for prekindergarten through grade 3 does not exceed 18 students;

(2) The maximum number of students who are assigned to each teacher who is teaching in public school classrooms for grades 4 through 8 does not exceed 22 students; and

(3) The maximum number of students who are assigned to each teacher who is teaching in public school classrooms for grades 9 through 12 does not exceed 25 students.

The class size requirements of this subsection do not apply to extracurricular classes. Payment of the costs associated with reducing class size to meet these requirements is the responsibility of the state and not of local school districts. Beginning with the 2003-2004 fiscal year, the legislature shall provide sufficient funds to reduce the average number of students in each classroom by at least two students per year until the maximum number of students per classroom does not exceed the requirements of this subsection.

(b) Every four-year old child in Florida shall be provided by the State a high quality pre-kindergarten learning opportunity in the form of an early childhood development and education program which shall be voluntary, high quality, free, and delivered according to professionally accepted standards. An early childhood development and education program means an organized program designed to address and enhance each child's ability to make age appropriate progress in an appropriate range of settings in the development of language and cognitive capabilities and emotional, social, regulatory and moral capacities through education in basic skills and such other skills as the Legislature may determine to be appropriate.

(c) The early childhood education and development programs provided by reason of subparagraph (b) shall be implemented no later than the beginning of the 2005 school year through funds generated in addition to those used for existing education, health, and development programs. Existing education, health, and development programs are those funded by the State as of January 1, 2002 that provided for child or adult education, health care, or development.

§ 2. State board of education

The state board of education shall be a body corporate and have such supervision of the system of free public education as is provided by law. The state board of education shall consist of seven members appointed by the governor to staggered 4-year terms, subject to confirmation by the senate. The state board of education shall appoint the commissioner of education.

§ 3. Terms of appointive board members

Members of any appointive board dealing with education may serve terms in excess of four years as provided by law.

§ 4. School districts; school boards

(a) Each county shall constitute a school district; provided, two or more contiguous counties, upon vote of the electors of each county pursuant to law, may be combined into one school district. In each school district there shall be a school board composed of five or more members chosen by vote of the electors in a nonpartisan election for appropriately staggered terms of four years, as provided by law.

(b) The school board shall operate, control and supervise all free public schools within the school district and determine the rate of school district taxes within the limits prescribed herein. Two or more school districts may operate and finance joint educational programs.

§ 5. Superintendent of schools

In each school district there shall be a superintendent of schools who shall be elected at the general election in each year the number of which is a multiple of four for a term of four years; or, when provided by resolution of the district school board, or by special law, approved by vote of the electors, the district school superintendent in any school district shall be employed by the district school board as provided by general law. The resolution or special law may be rescinded or repealed by either procedure after four years.

§ 6. State school fund

The income derived from the state school fund shall, and the principal of the fund may, be appropriated, but only to the support and maintenance of free public schools.

§ 7. State University System

(a) Purposes. In order to achieve excellence through teaching students, advancing research and providing public service for the benefit of Florida's citizens, their communities and economies, the people hereby establish a system of governance for the state university system of Florida.

(b) State University System. There shall be a single state university system comprised of all public universities. A board of trustees shall administer each public university and a board of governors shall govern the state university system.

(c) Local Boards of Trustees. Each local constituent university shall be administered by a board of trustees consisting of thirteen members dedicated to the purposes of the state university system. The board of governors shall establish the powers and duties of the boards of trustees. Each board of trustees shall consist of six citizen members appointed by the governor and five citizen members appointed by the board of governors. The appointed members shall be confirmed by the senate and serve staggered terms of five years as provided by law. The chair of the faculty senate, or the equivalent, and the president of the student body of the university shall also be members.

(d) Statewide Board of Governors. The board of governors shall be a body corporate consisting of seventeen members. The board shall operate, regulate, control, and be fully responsible for the management of the whole university system. These responsibilities shall include, but not be limited to, defining the distinctive mission of each constituent university and its articulation with free public schools and community colleges, ensuring the well-planned coordination and operation of the system, and avoiding wasteful duplication of facilities or programs. The board's management shall be subject to the powers of the legislature to appropriate for the expenditure of funds, and the board shall account for such expenditures as provided by law. The governor shall appoint to the board fourteen citizens dedicated to the purposes of the state university system. The appointed members shall be confirmed by the senate and serve staggered terms of seven years as provided by law. The commissioner of education, the chair of the advisory council of faculty senates, or the equivalent, and the president of the Florida student association, or the equivalent, shall also be members of the board.

Article X. Miscellaneous

§ 1. Amendments to United States Constitution

The legislature shall not take action on any proposed amendment to the constitution of the United States unless a majority of the members thereof have been elected after the proposed amendment has been submitted for ratification.

§ 2. Militia

(a) The militia shall be composed of all ablebodied inhabitants of the state who are or have declared their intention to become citizens of the United States; and no person because of religious creed or opinion shall be exempted from military duty except upon conditions provided by law.
(b) The organizing, equipping, housing, maintaining, and disciplining of the militia, and the safekeeping of public arms may be provided for by law.
(c) The governor shall appoint all commissioned officers of the militia, including an adjutant general who shall be chief of staff. The appointment of all general officers shall be subject to confirmation by the senate.
(d) The qualifications of personnel and officers of the federally recognized national guard, including the adjutant general, and the grounds and proceedings for their discipline and removal shall conform to the appropriate United States army or air force regulations and usages.

§ 3. Vacancy in office

Vacancy in office shall occur upon the creation of an office, upon the death, removal from office, or resignation of the incumbent or the incumbent's succession to another office, unexplained absence for sixty consecutive days, or failure to maintain the residence required when elected or appointed, and upon failure of one elected or appointed to office to qualify within thirty days from the commencement of the term.

§ 4. Homestead; exemptions

(a) There shall be exempt from forced sale under process of any court, and no judgment, decree or execution shall be a lien thereon, except for the payment of taxes and assessments thereon, obligations contracted for the purchase, improvement or repair thereof, or obligations contracted for house, field or other labor performed on the realty, the following property owned by a natural person:
(1) a homestead, if located outside a municipality, to the extent of one hundred sixty acres of contiguous land and improvements thereon, which shall not be reduced without the owner's consent by reason of subsequent inclusion in a municipality; or if located within a municipality, to the extent of one-half acre of contiguous land, upon which the exemption shall be limited to the residence of the owner or the owner's family;
(2) personal property to the value of one thousand dollars.
(b) These exemptions shall inure to the surviving spouse or heirs of the owner.
(c) The homestead shall not be subject to devise if the owner is survived by spouse or minor child, except the homestead may be devised to the owner's spouse if there be no minor child. The owner of homestead real estate, joined by the spouse if married, may alienate the homestead by mortgage, sale or gift and, if married, may by deed transfer the title to an estate by the entirety with the spouse. If the owner or spouse is incompetent, the method of alienation or encumbrance shall be as provided by law.

§ 5. Coverture and property

There shall be no distinction between married women and married men in the holding, control, disposition, or encumbering of their property, both real and personal; except that dower or curtesy may be established and regulated by law.

§ 6. Eminent domain

(a) No private property shall be taken except for a public purpose and with full compensation therefor paid to each owner or secured by deposit in the registry of the court and available to the owner.
(b) Provision may be made by law for the taking of easements, by like proceedings, for the drainage of the land of one person over or through the land of another.

§ 7. Lotteries

Lotteries, other than the types of pari-mutuel pools authorized by law as of the effective date of this constitution, are hereby prohibited in this state.

§ 8. Census

(a) Each decennial census of the state taken by the United States shall be an official census of the state.
(b) Each decennial census, for the purpose of classifications based upon population, shall become effective on the thirtieth day after the final adjournment of the regular session of the legislature convened next after certification of the census.

§ 9. Repeal of criminal statutes

Repeal or amendment of a criminal statute shall not affect prosecution or punishment for any crime previously committed.

§ 10. Felony; definition

The term "felony" as used herein and in the laws of this state shall mean any criminal offense that is punishable under the laws of this state, or that would be punishable if committed in this state, by death or by imprisonment in the state penitentiary.

§ 11. Sovereignty lands

The title to lands under navigable waters, within the boundaries of the state, which have not been alienated, including beaches below mean high water lines, is held by the state, by virtue of its sovereignty, in trust for all the people. Sale of such lands may be authorized by law, but only when in the public interest. Private use of portions of such lands may be authorized by law, but only when not contrary to the public interest.

§ 12. Rules of construction

Unless qualified in the text the following rules of construction shall apply to this constitution.
(a) "Herein" refers to the entire constitution.
(b) The singular includes the plural.
(c) The masculine includes the feminine.
(d) "Vote of the electors" means the vote of the majority of those voting on the matter in an election, general or special, in which those participating are limited to the electors of the governmental unit referred to in the text.
(e) Vote or other action of a legislative house or other governmental body means the vote or action of a majority or other specified percentage of those members voting on the matter. "Of the membership" means "of all members thereof."
(f) The terms "judicial office," "justices" and "judges" shall not include judges of courts established solely for the trial of violations of ordinances.
(g) "Special law" means a special or local law.
(h) Titles and subtitles shall not be used in construction.

§ 13. Suits against the state

Provision may be made by general law for bringing suit against the state as to all liabilities now existing or hereafter originating.

§ 14. State retirement systems benefit changes

A governmental unit responsible for any retirement or pension system supported in whole or in part by public funds shall not after January 1, 1977, provide any increase in the benefits to the members or beneficiaries of such system unless such unit has made or concurrently makes provision for the funding of the increase in benefits on a sound actuarial basis.

§ 15. State operated lotteries

(a) Lotteries may be operated by the state.

(b) If any subsection or subsections of the amendment to the Florida Constitution are held unconstitutional for containing more than one subject, this amendment shall be limited to subsection (a) above.

(c) This amendment shall be implemented as follows:

(1) Schedule--On the effective date of this amendment, the lotteries shall be known as the Florida Education Lotteries. Net proceeds derived from the lotteries shall be deposited to a state trust fund, to be designated The State Education Lotteries Trust Fund, to be appropriated by the Legislature. The schedule may be amended by general law.

§ 16. Limiting marine net fishing

(a) The marine resources of the State of Florida belong to all of the people of the state and should be conserved and managed for the benefit of the state, its people, and future generations. To this end the people hereby enact limitations on marine net fishing in Florida waters to protect saltwater finfish, shellfish, and other marine animals from unnecessary killing, overfishing, and waste.

(b) For purposes of catching or taking any saltwater finfish, shellfish or other marine animals in Florida waters:

(1) No gill nets or other entangling nets shall be used in Florida waters; and

(2) In addition to the prohibition set forth in (1), no other type of net containing more than 500 square feet of mesh area shall be used in nearshore and inshore Florida waters. Additionally, no more than two such nets, which shall not be connected, shall be used from any vessel, and no person not on vessel shall use more than one such net in nearshore and inshore Florida waters.

(c) For purposes of this section:

(1) "gill net" means one or more walls of netting which captures saltwater finfish by ensnaring or entangling them in the meshes of the net by the gills, and "entangling net" means a drift net, tarammel net, stab net, or any other net which captures saltwater finfish, shellfish, or other marine animals by causing all or part of heads, fins, legs, or other body parts to become entangled or ensnared in the meshes of the net, but a hand thrown, cast net is not a gill or an entangling net;

(2) "mesh area" of a net means the total area of netting with the meshes open to comprise the maximum square footage. The square footage shall be calculated using standard mathematical formulas for geometric shapes. Seines and other rectangular nets shall be calculated using the maximum length and maximum width of netting. Trawls and other bag type nets shall be calculated as a cone using the maximum circumference of the net mouth to derive the radius, and the maximum length from the net mouth to the tail end of the net to derive the slant height. Calculations for any other nets of combination type nets shall be based on the shape of the individual components;

(3) "coastline" means the territorial sea base line for the State of Florida established pursuant to the laws of the United States of America;

(4) "Florida waters" means the waters of the Atlantic Ocean, the Gulf of Mexico, the Straits of FLorida, and any other bodies of water under the jurisdiction of the State of Florida, whether coastal, intracoastal or inland, and any part thereof; and

(5) "nearshore and inshore Florida waters" means all Florida waters inside a line three miles seaward of the coastline along the Gulf of Mexico and inside a line one mile seaward of the coastline along the Atlantic Ocean.

(d) This section shall not apply to the use of nets for scientific research or governmental purposes.

(e) Persons violating this section shall be prosecuted and punished pursuant to the penalties in s. 370.021(2)(a), (b), (c)6. and 7., and (e). Florida Statutes (1991), unless and until the legislature enacts more stringent penalties for violations thereof. On and after the effective date of this section, law enforcement officers in the state are authorized to enforce the provisions of this section in the same manner and authority as if a violation of this section constituted a violation of Chapter 370, Florida Statutes (1991).

(f) It is the intent of this section that implementing legislation is not required for enforcing any violations hereof, but nothing in this section prohibits the establishment by law or pursuant to law of more restrictions on the use of nets for the purpose of catching or taking any saltwater finfish, shellfish, or other marine animals.

(g) If any portion of this section is held invalid for any reason, the remaining portion of this section, to the fullest extent possible, shall be severed from the void portion and given the fullest possible force and application.

(h) This section shall take effect on the July 1 next occurring after approval hereof by vote of the electors.

§ 17. Everglades Trust Fund

(a) There is hereby established the Everglades Trust Fund, which shall not be subject to termination pursuant to Article III, Section 19(f). The purpose of the Everglades Trust Fund is to make funds available to assist in conservation and protection of natural resources and abatement of water pollution in the Everglades Protection Area and the Everglades Agricultural Area. The trust fund shall be administered by the South Florida Water Management District, or its successor agency, consistent with statutory law.

(b) The Everglades Trust Fund may receive funds from any source, including gifts from individuals, corporations

or other entities, funds from general revenue as determined by the Legislature; and any other funds so designated by the Legislature, by the United States Congress or by any other governmental entity.

(c) Funds deposited to the Everglades Trust Fund shall be expended for purposes of conservation and protection of natural resources and abatement of water pollution in the Everglades Protection Area and Everglades Agricultural Area.

(d) For purposes of this subsection, the terms "Everglades Protection Area, "Everglades Agricultural Area" and "South Florida Water Management District" shall have the meanings as defined in statutes in effect on January 1, 1996.

§ 18. Disposition of conservation lands

The fee interest in real property held by an entity of the state and designated for natural resources conservation purposes as provided by general law shall be managed for the benefit of the citizens of this state and may be disposed of only if the members of the governing board of the entity holding title determine the property is no longer needed for conservation purposes and only upon a vote of two-thirds of the governing board.

§ 19. Repealed effective January 4, 2005 [High speed ground transportation system]

§ 20. Workplaces without tobacco smoke

(a) Prohibition. As a Florida health initiative to protect people from the health hazards of second-hand tobacco smoke, tobacco smoking is prohibited in enclosed indoor workplaces.

(b) Exceptions. As further explained in the definitions below, tobacco smoking may be permitted in private residences whenever they are not being used commercially to provide child care, adult care, or health care, or any combination thereof; and further may be permitted in retail tobacco shops, designated smoking guest rooms at hotels and other public lodging establishments; and stand-alone bars. However, nothing in this section or in its implementing legislation or regulations shall prohibit the owner, lessee, or other person in control of the use of an enclosed indoor workplace from further prohibiting or limiting smoking therein.

(c) Definitions. For purposes of this section, the following words and terms shall have the stated meanings:

"Smoking" means inhaling, exhaling, burning, carrying, or possessing any lighted tobacco product, including cigarettes, cigars, pipe tobacco, and any other lighted tobacco product.

"Second-hand smoke," also known as environmental tobacco smoke (ETS), means smoke emitted from lighted, smoldering, or burning tobacco when the smoker is not inhaling; smoke emitted at the mouthpiece during puff drawing; and smoke exhaled by the smoker.

"Work" means any person's providing any employment or employment-type service for or at the request of another individual or individuals or any public or private entity, whether for compensation or not, whether full or part-time, whether legally or not. "Work" includes, without limitation, any such service performed by an employee, independent contractor, agent, partner, proprietor, manager, officer, director, apprentice, trainee, associate, servant, volunteer, and the like.

"Enclosed indoor workplace" means any place where one or more persons engages in work, and which place is predominantly or totally bounded on all sides and above by physical barriers, regardless of whether such barriers consist of or include uncovered openings, screened or otherwise partially covered openings; or open or closed windows, jalousies, doors, or the like. This section applies to all such enclosed indoor workplaces without regard to whether work is occurring at any given time.

"Commercial" use of a private residence means any time during which the owner, lessee, or other person occupying or controlling the use of the private residence is furnishing in the private residence, or causing or allowing to be furnished in the private residence, child care, adult care, or health care, or any combination thereof, and receiving or expecting to receive compensation therefor.

"Retail tobacco shop" means any enclosed indoor workplace dedicated to or predominantly for the retail sale of tobacco, tobacco products, and accessories for such products, in which the sale of other products or services is merely incidental.

"Designated smoking guest rooms at public lodging establishments" means the sleeping rooms and directly associated private areas, such as bathrooms, living rooms, and kitchen areas, if any, rented to guests for their exclusive transient occupancy in public lodging establishments including hotels, motels, resort condominiums, transient apartments, transient lodging establishments, rooming houses, boarding houses, resort dwellings, bed and breakfast inns, and the like; and designated by the person or persons having management authority over such public lodging establishment as rooms in which smoking may be permitted.

"Stand-alone bar" means any place of business devoted during any time of operation predominantly or totally to serving alcoholic beverages, intoxicating beverages, or intoxicating liquors, or any combination thereof, for consumption on the licensed premises; in which the serving of food, if any, is merely incidental to the consumption of any such beverage; and that is not located within, and does not share any common entryway or common indoor

area with, any other enclosed indoor workplace including any business for which the sale of food or any other product or service is more than an incidental source of gross revenue.

(d) Legislation. In the next regular legislative session occurring after voter approval of this amendment, the Florida Legislature shall adopt legislation to implement this amendment in a manner consistent with its broad purpose and stated terms, and having an effective date no later than July 1 of the year following voter approval. Such legislation shall include, without limitation, civil penalties for violations of this section; provisions for administrative enforcement; and the requirement and authorization of agency rules for implementation and enforcement. Nothing herein shall preclude the Legislature from enacting any law constituting or allowing a more restrictive regulation of tobacco smoking than is provided in this section.

§ 21. Limiting cruel and inhumane confinement of pigs during pregnancy

Inhumane treatment of animals is a concern of Florida citizens. To prevent cruelty to certain animals and as recommended by The Humane Society of the United States, the people of the State of Florida hereby limit the cruel and inhumane confinement of pigs during pregnancy as provided herein.

a. It shall be unlawful for any person to confine a pig during pregnancy in an enclosure, or to tether a pig during pregnancy, on a farm in such a way that she is prevented from turning around freely.

b. This section shall not apply:

1. when a pig is undergoing an examination, test, treatment or operation carried out for veterinary purposes, provided the period during which the animal is confined or tethered is not longer than reasonably necessary.

2. during the prebirthing period.

a. For purposes of this section:

1. "enclosure" means any cage, crate or other enclosure in which a pig is kept for all or the majority of any day, including what is commonly described as the "gestation crate."

2. "farm" means the land, buildings, support facilities, and other appurtenances used in the production of animals for food or fiber.

3. "person" means any natural person, corporation and/or business entity.

4. "pig" means any animal of the porcine species.

5. "turning around freely" means turning around without having to touch any side of the pig's enclosure.

6. "prebirthing period" means the seven day period prior to a pig's expected date of giving birth.

a. A person who violates this section shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082(4)(a), Florida Statutes (1999), as amended, or by a fine of not more than $5000, or by both imprisonment and a fine, unless and until the legislature enacts more stringent penalties for violations hereof. On and after the effective date of this section, law enforcement officers in the state are authorized to enforce the provisions of this section in the same manner and authority as if a violation of this section constituted a violation of Section 828.13, Florida Statutes (1999). The confinement or tethering of each pig shall constitute a separate offense. The knowledge or acts of agents and employees of a person in regard to a pig owned, farmed or in the custody of a person, shall be held to be the knowledge or act of such person.

b. It is the intent of this section that implementing legislation is not required for enforcing any violations hereof.

c. If any portion of this section is held invalid for any reason, the remaining portion of this section, to the fullest extent possible, shall be severed from the void portion and given the fullest possible force and application.

d. This section shall take effect six years after approval by the electors.

§ 22. Parental notice of termination of a minor's pregnancy

The legislature shall not limit or deny the privacy right guaranteed to a minor under the United States Constitution as interpreted by the United States Supreme Court. Notwithstanding a minor's right of privacy provided in Section 23 of Article I, the Legislature is authorized to require by general law for notification to a parent or guardian of a minor before the termination of the minor's pregnancy. The Legislature shall provide exceptions to such requirement for notification and shall create a process for judicial waiver of the notification.

§ 23. Slot machines

(a) After voter approval of this constitutional amendment, the governing bodies of Miami-Dade and Broward Counties each may hold a county-wide referendum in their respective counties on whether to authorize slot machines within existing, licensed parimutuel facilities (thoroughbred and harness racing, greyhound racing, and jai-alai) that have conducted live racing or games in that county during each of the last two calendar years before the effective date of this amendment. If the voters of such county approve the referendum question by majority vote, slot machines shall be authorized in such parimutuel facilities. If the voters of such county by majority vote disapprove the referendum question, slot machines shall not be so authorized, and the question shall not be presented in another referendum in that county for at least two years.

(b) In the next regular Legislative session occurring after voter approval of this constitutional amendment, the Legislature shall adopt legislation implementing this section and having an effective date no later than July 1 of the year following voter approval of this amendment. Such legislation shall authorize agency rules for implementation, and may include provisions for the licensure and regulation of slot machines. The Legislature may tax slot machine revenues, and any such taxes must supplement public education funding statewide.

(c) If any part of this section is held invalid for any reason, the remaining portion or portions shall be severed from the invalid portion and given the fullest possible force and effect.

(d) This amendment shall become effective when approved by vote of the electors of the state.

§ 24. Florida minimum wage

(a) Public policy. All working Floridians are entitled to be paid a minimum wage that is sufficient to provide a decent and healthy life for them and their families, that protects their employers from unfair low-wage competition, and that does not force them to rely on taxpayer-funded public services in order to avoid economic hardship.

(b) Definitions. As used in this amendment, the terms "Employer," "Employee" and "Wage" shall have the meanings established under the federal Fair Labor Standards Act (FLSA) and its implementing regulations.

(c) Minimum wage. Employers shall pay Employees Wages no less than the Minimum Wage for all hours worked in Florida. Six months after enactment, the Minimum Wage shall be established at an hourly rate of $6.15. On September 30th of that year and on each following September 30th, the state Agency for Workforce Innovation shall calculate an adjusted Minimum Wage rate by increasing the current Minimum Wage rate by the rate of inflation during the twelve months prior to each September 1st using the consumer price index for urban wage earners and clerical workers, CPI-W, or a successor index as calculated by the United States Department of Labor. Each adjusted Minimum Wage rate calculated shall be published and take effect on the following January 1st. For tipped Employees meeting eligibility requirements for the tip credit under the FLSA, Employers may credit towards satisfaction of the Minimum Wage tips up to the amount of the allowable FLSA tip credit in 2003.

(d) Retaliation prohibited. It shall be unlawful for an Employer or any other party to discriminate in any manner or take adverse action against any person in retaliation for exercising rights protected under this amendment. Rights protected under this amendment include, but are not limited to, the right to file a complaint or inform any person about any party's alleged noncompliance with this amendment, and the right to inform any person of his or her potential rights under this amendment and to assist him or her in asserting such rights.

(e) Enforcement. Persons aggrieved by a violation of this amendment may bring a civil action in a court of competent jurisdiction against an Employer or person violating this amendment and, upon prevailing, shall recover the full amount of any back wages unlawfully withheld plus the same amount as liquidated damages, and shall be awarded reasonable attorney's fees and costs. In addition, they shall be entitled to such legal or equitable relief as may be appropriate to remedy the violation including, without limitation, reinstatement in employment and/or injunctive relief. Any Employer or other person found liable for willfully violating this amendment shall also be subject to a fine payable to the state in the amount of $1000.00 for each violation. The state attorney general or other official designated by the state legislature may also bring a civil action to enforce this amendment. Actions to enforce this amendment shall be subject to a statute of limitations of four years or, in the case of willful violations, five years. Such actions may be brought as a class action pursuant to Rule 1.220 of the Florida Rules of Civil Procedure.

(f) Additional legislation, implementation and construction. Implementing legislation is not required in order to enforce this amendment. The state legislature may by statute establish additional remedies or fines for violations of this amendment, raise the applicable Minimum Wage rate, reduce the tip credit, or extend coverage of the Minimum Wage to employers or employees not covered by this amendment. The state legislature may by statute or the state Agency for Workforce Innovation may by regulation adopt any measures appropriate for the implementation of this amendment. This amendment provides for payment of a minimum wage and shall not be construed to preempt or otherwise limit the authority of the state legislature or any other public body to adopt or enforce any other law, regulation, requirement, policy or standard that provides for payment of higher or supplemental wages or benefits, or that extends such protections to employers or employees not covered by this amendment. It is intended that case law, administrative interpretations, and other guiding standards developed under the federal FLSA shall guide the construction of this amendment and any implementing statutes or regulations.

(g) Severability. If any part of this amendment, or the application of this amendment to any person or circumstance, is held invalid, the remainder of this amendment, including the application of such part to other persons or circumstances, shall not be affected by such a holding and shall continue in full force and effect. To this end, the parts of this amendment are severable.

§ 25. Patients' right to know about adverse medical incidents

(a) In addition to any other similar rights provided herein or by general law, patients have a right to have access to any records made or received in the course of business by a health care facility or provider relating to any adverse

medical incident.

(b) In providing such access, the identity of patients involved in the incidents shall not be disclosed, and any privacy restrictions imposed by federal law shall be maintained.

(c) For purposes of this section, the following terms have the following meanings:

(1) The phrases "health care facility" and "health care provider" have the meaning given in general law related to a patient's rights and responsibilities.

(2) The term "patient" means an individual who has sought, is seeking, is undergoing, or has undergone care or treatment in a health care facility or by a health care provider.

(3) The phrase "adverse medical incident" means medical negligence, intentional misconduct, and any other act, neglect, or default of a health care facility or health care provider that caused or could have caused injury to or death of a patient, including, but not limited to, those incidents that are required by state or federal law to be reported to any governmental agency or body, and incidents that are reported to or reviewed by any health care facility peer review, risk management, quality assurance, credentials, or similar committee, or any representative of any such committees.

(4) The phrase "have access to any records" means, in addition to any other procedure for producing such records provided by general law, making the records available for inspection and copying upon formal or informal request by the patient or a representative of the patient, provided that current records which have been made publicly available by publication or on the Internet may be "provided" by reference to the location at which the records are publicly available.

§ 26. Prohibition of medical license after repeated medical malpractice

(a) No person who has been found to have committed three or more incidents of medical malpractice shall be licensed or continue to be licensed by the State of Florida to provide health care services as a medical doctor.

(b) For purposes of this section, the following terms have the following meanings:

(1) The phrase "medical malpractice" means both the failure to practice medicine in Florida with that level of care, skill, and treatment recognized in general law related to health care providers' licensure, and any similar wrongful act, neglect, or default in other states or countries which, if committed in Florida, would have been considered medical malpractice.

(2) The phrase "found to have committed" means that the malpractice has been found in a final judgment of a court or law, final administrative agency decision, or decision of binding arbitration.

Article XI. Amendments

§ 1. Proposal by legislature

Amendment of a section or revision of one or more articles, or the whole, of this constitution may be proposed by joint resolution agreed to by three-fifths of the membership of each house of the legislature. The full text of the joint resolution and the vote of each member voting shall be entered on the journal of each house.

§ 2. Revision commission

(a) Within thirty days before the convening of the 2017 regular session of the legislature, and each twentieth year thereafter, there shall be established a constitution revision commission composed of the following thirty-seven members:
(1) the attorney general of the state;
(2) fifteen members selected by the governor;
(3) nine members selected by the speaker of the house of representatives and nine members selected by the president of the senate; and
(4) three members selected by the chief justice of the supreme court of Florida with the advice of the justices.
(b) The governor shall designate one member of the commission as its chair. Vacancies in the membership of the commission shall be filled in the same manner as the original appointments.
(c) Each constitution revision commission shall convene at the call of its chair, adopt its rules of procedure, examine the constitution of the state, hold public hearings, and, not later than one hundred eighty days prior to the next general election, file with the custodian of state records its proposal, if any, of a revision of this constitution or any part of it.

§ 3. Initiative

The power to propose the revision or amendment of any portion or portions of this constitution by initiative is reserved to the people, provided that, any such revision or amendment, except for those limiting the power of government to raise revenue, shall embrace but one subject and matter directly connected therewith. It may be invoked by filing with the custodian of state records a petition containing a copy of the proposed revision or amendment, signed by a number of electors in each of one half of the congressional districts of the state, and of the state as a whole, equal to eight percent of the votes cast in each of such districts respectively and in the state as a whole in the last preceding election in which presidential electors were chosen.

§ 4. Constitutional convention

(a) The power to call a convention to consider a revision of the entire constitution is reserved to the people. It may be invoked by filing with the custodian of state records a petition, containing a declaration that a constitutional convention is desired, signed by a number of electors in each of one half of the congressional districts of the state, and of the state as a whole, equal to fifteen per cent of the votes cast in each such district respectively and in the state as a whole in the last preceding election of presidential electors.
(b) At the next general election held more than ninety days after the filing of such petition there shall be submitted to the electors of the state the question: "Shall a constitutional convention be held?" If a majority voting on the question votes in the affirmative, at the next succeeding general election there shall be elected from each representative district a member of a constitutional convention. On the twenty-first day following that election, the convention shall sit at the capital, elect officers, adopt rules of procedure, judge the election of its membership, and fix a time and place for its future meetings. Not later than ninety days before the next succeeding general election, the convention shall cause to be filed with the custodian of state records any revision of this constitution proposed by it.

§ 5. Amendment or revision election

(a) A proposed amendment to or revision of this constitution, or any part of it, shall be submitted to the electors at the next general election held more than ninety days after the joint resolution or report of revision commission, constitutional convention or taxation and budget reform commission proposing it is filed with the custodian of state records, unless, pursuant to law enacted by the affirmative vote of three-fourths of the membership of each house of the legislature and limited to a single amendment or revision, it is submitted at an earlier special election held more than ninety days after such filing.
(b) A proposed amendment or revision of this constitution, or any part of it, by initiative shall be submitted to the electors at the general election provided the initiative petition is filed with the custodian of state records no later than

February 1 of the year in which the general election is held.

(c) The legislature shall provide by general law, prior to the holding of an election pursuant to this section, for the provision of a statement to the public regarding the probable financial impact of any amendment proposed by initiative pursuant to section 3.

(d) Once in the tenth week, and once in the sixth week immediately preceding the week in which the election is held, the proposed amendment or revision, with notice of the date of election at which it will be submitted to the electors, shall be published in one newspaper of general circulation in each county in which a newspaper is published.

(e) If the proposed amendment or revision is approved by vote of the electors, it shall be effective as an amendment to or revision of the constitution of the state on the first Tuesday after the first Monday in January following the election, or on such other date as may be specified in the amendment or revision.

§ 6. Taxation and budget reform commission

(a) Beginning in 2007 and each twentieth year thereafter, there shall be established a taxation and budget reform commission composed of the following members:

(1) eleven members selected by the governor, none of whom shall be a member of the legislature at the time of appointment.

(2) seven members selected by the speaker of the house of representatives and seven members selected by the president of the senate, none of whom shall be a member of the legislature at the time of appointment.

(3) four non-voting ex officio members, all of whom shall be members of the legislature at the time of appointment. Two of these members, one of whom shall be a member of the minority party in the house of representatives, shall be selected by the speaker of the house of representatives, and two of these members, one of whom shall be a member of the minority party in the senate, shall be selected by the president of the senate.

(b) Vacancies in the membership of the commission shall be filled in the same manner as the original appointments.

(c) At its initial meeting, the members of the commission shall elect a member who is not a member of the legislature to serve as chair and the commission shall adopt its rules of procedure. Thereafter, the commission shall convene at the call of the chair. An affirmative vote of two thirds of the full commission shall be necessary for any revision of this constitution or any part of it to be proposed by the commission.

(d) The commission shall examine the state budgetary process, the revenue needs and expenditure processes of the state, the appropriateness of the tax structure of the state, and governmental productivity and efficiency; review policy as it relates to the ability of state and local government to tax and adequately fund governmental operations and capital facilities required to meet the state's needs during the next twenty year period; determine methods favored by the citizens of the state to fund the needs of the state, including alternative methods for raising sufficient revenues for the needs of the state; determine measures that could be instituted to effectively gather funds from existing tax sources; examine constitutional limitations on taxation and expenditures at the state and local level; and review the state's comprehensive planning, budgeting and needs assessment processes to determine whether the resulting information adequately supports a strategic decision making process.

(e) The commission shall hold public hearings as it deems necessary to carry out its responsibilities under this section. The commission shall issue a report of the results of the review carried out, and propose to the legislature any recommended statutory changes related to the taxation or budgetary laws of the state. Not later than one hundred eighty days prior to the general election in the second year following the year in which the commission is established, the commission shall file with the custodian of state records its proposal, if any, of a revision of this constitution or any part of it dealing with taxation or the state budgetary process.

§ 7. Tax or fee limitation

Notwithstanding Article X, Section 12(d) of this constitution, no new State tax or fee shall be imposed on or after November 8, 1994 by any amendment to this constitution unless the proposed amendment is approved by not fewer than two-thirds of the voters voting in the election in which such proposed amendment is considered. For purposes of this section, the phrase "new State tax or fee" shall mean any tax or fee which would produce revenue subject to lump sum or other appropriation by the Legislature, either for the State general revenue fund or any trust fund, which tax or fee is not in effect on November 7, 1994 including without limitation such taxes and fees as are the subject of proposed constitutional amendments appearing on the ballot on November 8, 1994. This section shall apply to proposed constitutional amendments relating to State taxes or fees which appear on the November 8, 1994 ballot, or later ballots, and any such proposed amendment which fails to gain the two-thirds vote required hereby shall be null, void and without effect.

Article XII. Schedule

§ 1. Constitution of 1885 superseded

Article I through IV, VII, and IX through XX of the Constitution of Florida adopted in 1885, as amended from time to time, are superseded by this revision except those sections expressly retained and made a part of this revision by reference.

§ 2. Property taxes; millages

Tax millages authorized in counties, municipalities and special districts, on the date this revision becomes effective, may be continued until reduced by law.

§ 3. Officers to continue in office

Every person holding office when this revision becomes effective shall continue in office for the remainder of the term if that office is not abolished. If the office is abolished the incumbent shall be paid adequate compensation, to be fixed by law, for the loss of emoluments for the remainder of the term.

§ 4. State commissioner of education

The state superintendent of public instruction in office on the effective date of this revision shall become and, for the remainder of the term being served, shall be the commissioner of education.

§ 5. Superintendent of schools

(a) On the effective date of this revision the county superintendent of public instruction of each county shall become and, for the remainder of the term being served, shall be the superintendent of schools of that district.
(b) The method of selection of the county superintendent of public instruction of each county, as provided by or under the Constitution of 1885, as amended, shall apply to the selection of the district superintendent of schools until changed as herein provided.

§ 6. Laws preserved

(a) All laws in effect upon the adoption of this revision, to the extent not inconsistent with it, shall remain in force until they expire by their terms or are repealed.
(b) All statutes which, under the Constitution of 1885, as amended, apply to the state superintendent of public instruction and those which apply to the county superintendent of public instruction shall under this revision apply, respectively, to the state commissioner of education and the district superintendent of schools.

§ 7. Rights reserved

(a) All actions, rights of action, claims, contracts and obligations of individuals, corporations and public bodies or agencies existing on the date this revision becomes effective shall continue to be valid as if this revision had not been adopted. All taxes, penalties, fines and forfeitures owing to the state under the Constitution of 1885, as amended, shall inure to the state under this revision, and all sentences as punishment for crime shall be executed according to their terms.
(b) This revision shall not be retroactive so as to create any right or liability which did not exist under the Constitution of 1885, as amended, based upon matters occurring prior to the adoption of this revision.

§ 8. Public debts recognized

All bonds, revenue certificates, revenue bonds and tax anticipation certificates issued pursuant to the Constitution of 1885, as amended by the state, any agency, political subdivision or public corporation of the state shall remain in full force and effect and shall be secured by the same sources of revenue as before the adoption of this revision, and, to the extent necessary to effectuate this section, the applicable provisions of the Constitution of 1885, as amended, are retained as a part of this revision until payment in full of these public securities.

§ 9. Bonds

(a) Additional securities.--

(1) Article IX, Section 17, of the Constitution of 1885, as amended, as it existed immediately before this Constitution, as revised in 1968, became effective, is adopted by this reference as a part of this revision as completely as though incorporated herein verbatim, except revenue bonds, revenue certificates or other evidences of indebtedness hereafter issued thereunder may be issued by the agency of the state so authorized by law.

(2) That portion of Article XII, Section 9, Subsection (a) of this Constitution, as amended, which by reference adopted Article XII, Section 19 of the Constitution of 1885, as amended, as the same existed immediately before the effective date of this amendment is adopted by this reference as part of this revision as completely as though incorporated herein verbatim, for the purpose of providing that after the effective date of this amendment all of the proceeds of the revenues derived from the gross receipts taxes, as therein defined, collected in each year shall be applied as provided therein to the extent necessary to comply with all obligations to or for the benefit of holders of bonds or certificates issued before the effective date of this amendment or any refundings thereof which are secured by such gross receipts taxes. No bonds or other obligations may be issued pursuant to the provisions of Article XII, Section 19, of the Constitution of 1885, as amended, but this provision shall not be construed to prevent the refunding of any such outstanding bonds or obligations pursuant to the provisions of this subsection (a)(2).

Subject to the requirements of the first paragraph of this subsection (a)(2), beginning July 1, 1975, all of the proceeds of the revenues derived from the gross receipts taxes collected from every person, including municipalities, as provided and levied pursuant to the provisions of chapter 203, Florida Statutes, as such chapter is amended from time to time, shall, as collected, be placed in a trust fund to be known as the "public education capital outlay and debt service trust fund" in the state treasury (hereinafter referred to as "capital outlay fund"), and used only as provided herein.

The capital outlay fund shall be administered by the state board of education as created and constituted by Section 2 of Article IX of the Constitution of Florida as revised in 1968 (hereinafter referred to as "state board"), or by such other instrumentality of the state which shall hereafter succeed by law to the powers, duties and functions of the state board, including the powers, duties and functions of the state board provided in this subsection (a)(2). The state board shall be a body corporate and shall have all the powers provided herein in addition to all other constitutional and statutory powers related to the purposes of this subsection (a)(2) heretofore or hereafter conferred by law upon the state board, or its predecessor created by the Constitution of 1885, as amended.

State bonds pledging the full faith and credit of the state may be issued, without a vote of the electors, by the state board pursuant to law to finance or refinance capital projects theretofore authorized by the legislature, and any purposes appurtenant or incidental thereto, for the state system of public education provided for in Section 1 of Article IX of this Constitution (hereinafter referred to as "state system"), including but not limited to institutions of higher learning, community colleges, vocational technical schools, or public schools, as now defined or as may hereafter be defined by law. All such bonds shall mature not later than thirty years after the date of issuance thereof. All other details of such bonds shall be as provided by law or by the proceedings authorizing such bonds; provided, however, that no bonds, except refunding bonds, shall be issued, and no proceeds shall be expended for the cost of any capital project, unless such project has been authorized by the legislature.

Bonds issued pursuant to this subsection (a)(2) shall be primarily payable from such revenues derived from gross receipts taxes, and shall be additionally secured by the full faith and credit of the state. No such bonds shall ever be issued in an amount exceeding ninety percent of the amount which the state board determines can be serviced by the revenues derived from the gross receipts taxes accruing thereafter under the provisions of this subsection (a)(2), and such determination shall be conclusive.

The moneys in the capital outlay fund in each fiscal year shall be used only for the following purposes and in the following order of priority:

a. For the payment of the principal of and interest on any bonds due in such fiscal year;

b. For the deposit into any reserve funds provided for in the proceedings authorizing the issuance of bonds of any amounts required to be deposited in such reserve funds in such fiscal year;

c. For direct payment of the cost or any part of the cost of any capital project for the state system theretofore authorized by the legislature, or for the purchase or redemption of outstanding bonds in accordance with the provisions of the proceedings which authorized the issuance of such bonds, or for the purpose of maintaining, restoring, or repairing existing public educational facilities.

(b) Refunding bonds.--Revenue bonds to finance the cost of state capital projects issued prior to the date this revision becomes effective, including projects of the Florida state turnpike authority or its successor but excluding all portions of the state highway system, may be refunded as provided by law without vote of the electors at a lower net average interest cost rate by the issuance of bonds maturing not later than the obligations refunded, secured by the same revenues only.

(c) Motor vehicle fuel taxes.--

(1) A state tax, designated "second gas tax," of two cents per gallon upon gasoline and other like products of petroleum and an equivalent tax upon other sources of energy used to propel motor vehicles as levied by Article IX,

Section 16, of the Constitution of 1885, as amended, is hereby continued. The proceeds of said tax shall be placed monthly in the state roads distribution fund in the state treasury.

(2) Article IX, Section 16, of the Constitution of 1885, as amended, is adopted by this reference as a part of this revision as completely as though incorporated herein verbatim for the purpose of providing that after the effective date of this revision the proceeds of the "second gas tax" as referred to therein shall be allocated among the several counties in accordance with the formula stated therein to the extent necessary to comply with all obligations to or for the benefit of holders of bonds, revenue certificates and tax anticipation certificates or any refundings thereof secured by any portion of the "second gas tax."

(3) No funds anticipated to be allocated under the formula stated in Article IX, Section 16, of the Constitution of 1885, as amended, shall be pledged as security for any obligation hereafter issued or entered into, except that any outstanding obligations previously issued pledging revenues allocated under said Article IX, Section 16, may be refunded at a lower average net interest cost rate by the issuance of refunding bonds, maturing not later than the obligations refunded, secured by the same revenues and any other security authorized in paragraph (5) of this subsection.

(4) Subject to the requirements of paragraph (2) of this subsection and after payment of administrative expenses, the "second gas tax" shall be allocated to the account of each of the several counties in the amounts to be determined as follows: There shall be an initial allocation of one-fourth in the ratio of county area to state area, one-fourth in the ratio of the total county population to the total population of the state in accordance with the latest available federal census, and one-half in the ratio of the total "second gas tax" collected on retail sales or use in each county to the total collected in all counties of the state during the previous fiscal year. If the annual debt service requirements of any obligations issued for any county, including any deficiencies for prior years, secured under paragraph (2) of this subsection, exceeds the amount which would be allocated to that county under the formula set out in this paragraph, the amounts allocated to other counties shall be reduced proportionately.

(5) Funds allocated under paragraphs (2) and (4) of this subsection shall be administered by the state board of administration created under Article IV, Section 4. The board shall remit the proceeds of the "second gas tax" in each county account for use in said county as follows: eighty per cent to the state agency supervising the state road system and twenty per cent to the governing body of the county. The percentage allocated to the county may be increased by general law. The proceeds of the "second gas tax" subject to allocation to the several counties under this paragraph (5) shall be used first, for the payment of obligations pledging revenues allocated pursuant to Article IX, Section 16, of the Constitution of 1885, as amended, and any refundings thereof; second, for the payment of debt service on bonds issued as provided by this paragraph (5) to finance the acquisition and construction of roads as defined by law; and third, for the acquisition and construction of roads and for road maintenance as authorized by law. When authorized by law, state bonds pledging the full faith and credit of the state may be issued without any election: (i) to refund obligations secured by any portion of the "second gas tax" allocated to a county under Article IX, Section 16, of the Constitution of 1885, as amended; (ii) to finance the acquisition and construction of roads in a county when approved by the governing body of the county and the state agency supervising the state road system; and (iii) to refund obligations secured by any portion of the "second gas tax" allocated under paragraph 9(c)(4). No such bonds shall be issued unless a state fiscal agency created by law has made a determination that in no state fiscal year will the debt service requirements of the bonds and all other bonds secured by the pledged portion of the "second gas tax" allocated to the county exceed seventy-five per cent of the pledged portion of the "second gas tax" allocated to that county for the preceding state fiscal year, of the pledged net tolls from existing facilities collected in the preceding state fiscal year, and of the annual average net tolls anticipated during the first five state fiscal years of operation of new projects to be financed, and of any other legally available pledged revenues collected in the preceding state fiscal year. Bonds issued pursuant to this subsection shall be payable primarily from the pledged tolls, the pledged portions of the "second gas tax" allocated to that county, and any other pledged revenue, and shall mature not later than forty years from the date of issuance.

(d) School bonds.--

(1) Article XII, Section 9, Subsection (d) of this constitution, as amended, (which, by reference, adopted Article XII, Section 18, of the Constitution of 1885, as amended) as the same existed immediately before the effective date of this amendment is adopted by this reference as part of this amendment as completely as though incorporated herein verbatim, for the purpose of providing that after the effective date of this amendment the first proceeds of the revenues derived from the licensing of motor vehicles as referred to therein shall be distributed annually among the several counties in the ratio of the number of instruction units in each county, the same being coterminous with the school district of each county as provided in Article IX, Section 4, Subsection (a) of this constitution, in each year computed as provided therein to the extent necessary to comply with all obligations to or for the benefit of holders of bonds or motor vehicle tax anticipation certificates issued before the effective date of this amendment or any refundings thereof which are secured by any portion of such revenues derived from the licensing of motor vehicles.

(2) No funds anticipated to be distributed annually among the several counties under the formula stated in Article XII, Section 9, Subsection (d) of this constitution, as amended, as the same existed immediately before the effective date of this amendment shall be pledged as security for any obligations hereafter issued or entered into, except that any outstanding obligations previously issued pledging such funds may be refunded by the issuance of refunding

bonds.

(3) Subject to the requirements of paragraph (1) of this subsection (d) beginning July 1, 1973, the first proceeds of the revenues derived from the licensing of motor vehicles (hereinafter called "motor vehicle license revenues") to the extent necessary to comply with the provisions of this amendment, shall, as collected, be placed monthly in the school district and community college district capital outlay and debt service fund in the state treasury and used only as provided in this amendment. Such revenue shall be distributed annually among the several school districts and community college districts in the ratio of the number of instruction units in each school district or community college district in each year computed as provided herein. The amount of the first motor vehicle license revenues to be so set aside in each year and distributed as provided herein shall be an amount equal in the aggregate to the product of six hundred dollars ($600) multiplied by the total number of instruction units in all the school districts of Florida for the school fiscal year 1967-68, plus an amount equal in the aggregate to the product of eight hundred dollars ($800) multiplied by the total number of instruction units in all the school districts of Florida for the school fiscal year 1972-73 and for each school fiscal year thereafter which is in excess of the total number of such instruction units in all the school districts of Florida for the school fiscal year 1967-68, such excess units being designated "growth units." The amount of the first motor vehicle license revenues to be so set aside in each year and distributed as provided herein shall additionally be an amount equal in the aggregate to the product of four hundred dollars ($400) multiplied by the total number of instruction units in all community college districts of Florida. The number of instruction units in each school district or community college district in each year for the purposes of this amendment shall be the greater of (1) the number of instruction units in each school district for the school fiscal year 1967-68 or community college district for the school fiscal year 1968-69 computed in the manner heretofore provided by general law, or (2) the number of instruction units in such school district, including growth units, or community college district for the school fiscal year computed in the manner heretofore or hereafter provided by general law and approved by the state board of education (hereinafter called the state board), or (3) the number of instruction units in each school district, including growth units, or community college district on behalf of which the state board has issued bonds or motor vehicle license revenue anticipation certificates under this amendment which will produce sufficient revenues under this amendment to equal one and twelve-hundredths (1.12) times the aggregate amount of principal of and interest on all bonds or motor vehicle license revenue anticipation certificates issued under this amendment which will mature and become due in such year, computed in the manner heretofore or hereafter provided by general law and approved by the state board.

(4) Such funds so distributed shall be administered by the state board as now created and constituted by Section 2 of Article IX of the State Constitution as revised in 1968, or by such other instrumentality of the state which shall hereafter succeed by law to the powers, duties and functions of the state board, including the powers, duties and functions of the state board provided in this amendment. For the purposes of this amendment, said state board shall be a body corporate and shall have all the powers provided in this amendment in addition to all other constitutional and statutory powers related to the purposes of this amendment heretofore or hereafter conferred upon said state board.

(5) The state board shall, in addition to its other constitutional and statutory powers, have the management, control and supervision of the proceeds of the first motor vehicle license revenues provided for in this subsection (d). The state board shall also have power, for the purpose of obtaining funds for the use of any school board of any school district or board of trustees of any community college district in acquiring, building, constructing, altering, remodeling, improving, enlarging, furnishing, equipping, maintaining, renovating, or repairing of capital outlay projects for school purposes to issue bonds or motor vehicle license revenue anticipation certificates, and also to issue such bonds or motor vehicle license revenue anticipation certificates to pay, fund or refund any bonds or motor vehicle license revenue anticipation certificates theretofore issued by said state board. All such bonds or motor vehicle license revenue anticipation certificates shall bear interest at not exceeding the rate provided by general law and shall mature not later than thirty years after the date of issuance thereof. The state board shall have power to determine all other details of the bonds or motor vehicle license revenue anticipation certificates and to sell in the manner provided by general law, or exchange the bonds or motor vehicle license revenue anticipation certificates, upon such terms and conditions as the state board shall provide.

(6) The state board shall also have power to pledge for the payment of the principal of and interest on such bonds or motor vehicle license revenue anticipation certificates, including refunding bonds or refunding motor vehicle license revenue anticipation certificates, all or any part from the motor vehicle license revenues provided for in this amendment and to enter into any covenants and other agreements with the holders of such bonds or motor vehicle license revenue anticipation certificates at the time of the issuance thereof concerning the security thereof and the rights of the holders thereof, all of which covenants and agreements shall constitute legally binding and irrevocable contracts with such holders and shall be fully enforceable by such holders in any court of competent jurisdiction.

(7) No such bonds or motor vehicle license revenue anticipation certificates shall ever be issued by the state board, except to refund outstanding bonds or motor vehicle license revenue anticipation certificates, until after the adoption of a resolution requesting the issuance thereof by the school board of the school district or board of trustees of the community college district on behalf of which the obligations are to be issued. The state board of education shall limit the amount of such bonds or motor vehicle license revenue anticipation certificates which can be issued on

behalf of any school district or community college district to ninety percent (90%) of the amount which it determines can be serviced by the revenue accruing to the school district or community college district under the provisions of this amendment, and shall determine the reasonable allocation of the interest savings from the issuance of refunding bonds or motor vehicle license revenue anticipation certificates, and such determinations shall be conclusive. All such bonds or motor vehicle license revenue anticipation certificates shall be issued in the name of the state board of education but shall be issued for and on behalf of the school board of the school district or board of trustees of the community college district requesting the issuance thereof, and no election or approval of qualified electors shall be required for the issuance thereof.

(8) The state board shall in each year use the funds distributable pursuant to this amendment to the credit of each school district or community college district only in the following manner and in order of priority:

a. To comply with the requirements of paragraph (1) of this subsection (d).

b. To pay all amounts of principal and interest due in such year on any bonds or motor vehicle license revenue anticipation certificates issued under the authority hereof, including refunding bonds or motor vehicle license revenue anticipation certificates, issued on behalf of the school board of such school district or board of trustees of such community college district; subject, however, to any covenants or agreements made by the state board concerning the rights between holders of different issues of such bonds or motor vehicle license revenue anticipation certificates, as herein authorized.

c. To establish and maintain a sinking fund or funds to meet future requirements for debt service or reserves therefor, on bonds or motor vehicle license revenue anticipation certificates issued on behalf of the school board of such school district or board of trustees of such community college district under the authority hereof, whenever the state board shall deem it necessary or advisable, and in such amounts and under such terms and conditions as the state board shall in its discretion determine.

d. To distribute annually to the several school boards of the school districts or the boards of trustees of the community college districts for use in payment of debt service on bonds heretofore or hereafter issued by any such school boards of the school districts or boards of trustees of the community college districts where the proceeds of the bonds were used, or are to be used, in the acquiring, building, constructing, altering, remodeling, improving, enlarging, furnishing, equipping, maintaining, renovating, or repairing of capital outlay projects in such school districts or community college districts and which capital outlay projects have been approved by the school board of the school district or board of trustees of the community college district, pursuant to the most recent survey or surveys conducted under regulations prescribed by the state board to determine the capital outlay needs of the school district or community college district. The state board shall have power at the time of issuance of any bonds by any school board of any school district or board of trustees of any community college district to covenant and agree with such school board or board of trustees as to the rank and priority of payments to be made for different issues of bonds under this subparagraph d., and may further agree that any amounts to be distributed under this subparagraph d. may be pledged for the debt service on bonds issued by any school board of any school district or board of trustees of any community college district and for the rank and priority of such pledge. Any such covenants or agreements of the state board may be enforced by any holders of such bonds in any court of competent jurisdiction.

e. To pay the expenses of the state board in administering this subsection (d), which shall be prorated among the various school districts and community college districts and paid out of the proceeds of the bonds or motor vehicle license revenue anticipation certificates or from the funds distributable to each school district and community college district on the same basis as such motor vehicle license revenues are distributable to the various school districts and community college districts.

f. To distribute annually to the several school boards of the school districts or boards of trustees of the community college districts for the payment of the cost of acquiring, building, constructing, altering, remodeling, improving, enlarging, furnishing, equipping, maintaining, renovating, or repairing of capital outlay projects for school purposes in such school district or community college district as shall be requested by resolution of the school board of the school district or board of trustees of the community college district.

g. When all major capital outlay needs of a school district or community college district have been met as determined by the state board, on the basis of a survey made pursuant to regulations of the state board and approved by the state board, all such funds remaining shall be distributed annually and used for such school purposes in such school district or community college district as the school board of the school district or board of trustees of the community college district shall determine, or as may be provided by general law.

(9) Capital outlay projects of a school district or community college district shall be eligible to participate in the funds accruing under this amendment and derived from the proceeds of bonds and motor vehicle license revenue anticipation certificates and from the motor vehicle license revenues, only in the order of priority of needs, as shown by a survey or surveys conducted in the school district or community college district under regulations prescribed by the state board, to determine the capital outlay needs of the school district or community college district and approved by the state board; provided that the priority of such projects may be changed from time to time upon the request of the school board of the school district or board of trustees of the community college district and with the approval of the state board; and provided, further, that this paragraph (9) shall not in any manner affect any covenant, agreement or pledge made by the state board in the issuance by said state board of any bonds or motor

vehicle license revenue anticipation certificates, or in connection with the issuance of any bonds of any school board of any school district or board of trustees of any community college district.

(10) The state board shall have power to make and enforce all rules and regulations necessary to the full exercise of the powers herein granted and no legislation shall be required to render this amendment of full force and operating effect. The legislature shall not reduce the levies of said motor vehicle license revenues during the life of this amendment to any degree which will fail to provide the full amount necessary to comply with the provisions of this amendment and pay the necessary expenses of administering the laws relating to the licensing of motor vehicles, and shall not enact any law having the effect of withdrawing the proceeds of such motor vehicle license revenues from the operation of this amendment and shall not enact any law impairing or materially altering the rights of the holders of any bonds or motor vehicle license revenue anticipation certificates issued pursuant to this amendment or impairing or altering any covenant or agreement of the state board, as provided in such bonds or motor vehicle license revenue anticipation certificates.

(11) Bonds issued by the state board pursuant to this subsection (d) shall be payable primarily from said motor vehicle license revenues as provided herein, and if heretofore or hereafter authorized by law, may be additionally secured by pledging the full faith and credit of the state without an election. When heretofore or hereafter authorized by law, bonds issued pursuant to Article XII, Section 18 of the Constitution of 1885, as amended prior to 1968, and bonds issued pursuant to Article XII, Section 9, subsection (d) of the Constitution as revised in 1968, and bonds issued pursuant to this subsection (d), may be refunded by the issuance of bonds additionally secured by the full faith and credit of the state.

(e) Debt limitation.--Bonds issued pursuant to this Section 9 of Article XII which are payable primarily from revenues pledged pursuant to this section shall not be included in applying the limits upon the amount of state bonds contained in Section 11, Article VII, of this revision.

§ 10. Preservation of existing government

All provisions of Articles I through IV, VII and IX through XX of the Constitution of 1885, as amended, not embraced herein which are not inconsistent with this revision shall become statutes subject to modification or repeal as are other statutes.

§ 11. Deletion of obsolete schedule items

The legislature shall have power, by joint resolution, to delete from this revision any section of this Article XII, including this section, when all events to which the section to be deleted is or could become applicable have occurred. A legislative determination of fact made as a basis for application of this section shall be subject to judicial review.

§ 12. Senators

The requirements of staggered terms of senators in Section 15(a), of Article III of this revision shall apply only to senators elected in November, 1972, and thereafter.

§ 13. Legislative apportionment

The requirements of legislative apportionment in Section 16 of Article III of this revision shall apply only to the apportionment of the legislature following the decennial census of 1970, and thereafter.

§ 14. Representatives; terms

The legislature at its first regular session following the ratification of this revision, by joint resolution, shall propose to the electors of the state for ratification or rejection in the general election of 1970 an amendment to Article III, Section 15(b), of the constitution providing staggered terms of four years for members of the house of representatives.

§ 15. Special district taxes

Ad valorem taxing power vested by law in special districts existing when this revision becomes effective shall not be abrogated by Section 9(b) of Article VII herein, but such powers, except to the extent necessary to pay outstanding debts, may be restricted or withdrawn by law.

§ 16. Reorganization

The requirement of Section 6, Article IV of this revision shall not apply until July 1, 1969.

§ 17. Conflicting provisions

This schedule is designed to effect the orderly transition of government from the Constitution of 1885, as amended, to this revision and shall control in all cases of conflict with any part of Article I through IV, VII, and IX through XI herein.

§ 18. Bonds for housing and related facilities

Section 16 of Article VII, providing for bonds for housing and related facilities, shall take effect upon approval by the electors.

§ 19. Renewable energy source property

The amendment to Section 3 of Article VII, relating to an exemption for a renewable energy source device and real property on which such device is installed, if adopted at the special election in October 1980, shall take effect January 1, 1981.

§ 20. Access to public records

Section 24 of Article I, relating to access to public records, shall take effect July 1, 1993.

§ 21. State revenue limitation

The amendment to Section 1 of Article VII limiting state revenues shall take effect January 1, 1995, and shall first be applicable to state fiscal year 1995-1996.

§ 22. Historic property exemption and assessment

The amendments to Sections 3 and 4 of Article VII relating to ad valorem tax exemption for, and assessment of, historic property shall take effect January 1, 1999.

§ 23. Fish and wildlife conservation commission

(a) The initial members of the commission shall be the members of the game and fresh water fish commission and the marine fisheries commission who are serving on those commissions on the effective date of this amendment, who may serve the remainder of their respective terms. New appointments to the commission shall not be made until the retirement, resignation, removal, or expiration of the terms of the initial members results in fewer than seven members remaining.

(b) The jurisdiction of the marine fisheries commission as set forth in statutes in effect on March 1, 1998, shall be transferred to the fish and wildlife conservation commission. The jurisdiction of the marine fisheries commission transferred to the commission shall not be expanded except as provided by general law. All rules of the marine fisheries commission and game and fresh water fish commission in effect on the effective date of this amendment shall become rules of the fish and wildlife conservation commission until superseded or amended by the commission.

(c) On the effective date of this amendment, the marine fisheries commission and game and freshwater fish commission shall be abolished.

(d) This amendment shall take effect July 1, 1999.

§ 24. Executive branch reform

(a) The amendments contained in this revision shall take effect January 7, 2003, but shall govern with respect to the qualifying for and the holding of primary elections in 2002. The office of chief financial officer shall be a new office as a result of this revision.

(b) In the event the secretary of state is removed as a cabinet office in the 1998 general election, the term "custodian of state records" shall be substituted for the term "secretary of state" throughout the constitution and the duties previously performed by the secretary of state shall be as provided by law.

§ 25. Schedule to Article V Amendment

(a) Commencing with fiscal year 2000-2001, the legislature shall appropriate funds to pay for the salaries, costs, and expenses set forth in the amendment to Section 14 of Article V pursuant to a phase-in schedule established by general law.

(b) Unless otherwise provided herein, the amendment to Section 14 shall be fully effectuated by July 1, 2004.